

REPORTER'S RECORD

VOLUME 41 OF 84 VOLUMES

74721

TRIAL COURT CAUSE NO. F01-00237-T

STATE OF TEXAS	*	IN THE DISTRICT COURT
VS.	*	DALLAS COUNTY, TEXAS
RANDY ETHAN HALPRIN	*	283RD DISTRICT COURT

JURY TRIAL

FILED IN
COURT OF CRIMINAL APPEALS

OCT 10 2003

Troy C. Bennett, Jr., Clerk

On the 2nd day of June, 2003, morning session, the following proceedings came on to be heard in the above-entitled and numbered cause before the Honorable Vickers L. Cunningham, Sr., Judge Presiding, held in Dallas, Dallas County, Texas.

Proceedings reported by machine shorthand.

ORIGINAL

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P R O C E E D I N G S

THE COURT: Prior to the jury being sworn this morning, the Court will rule on some motions filed by the defendant. Motion to Set Aside the Indictment In That It's an Unconstitutional Statute, an eight-page motion. Would you like to argue your motion, Mr. King?

MR. KING: Yes, I would, Your Honor. Would the Court -- I have several motions entitled "unconstitutional". I'm trying to make sure which one the Court is specifically looking at.

THE COURT: To set aside the indictment.

MR. KING: I think that's -- I think that was one of the first motions that was filed, Judge. That motion has become an omnibus motion. I believe Mr. Ashford filed that. I apologize, Your Honor. I wanted to make sure I knew which one you were referring to.

Your Honor, we would just argue that the statute pertaining to capital punishment in the State of Texas is unconstitutional for a variety of reasons. And these motions that have been filed on behalf of Mr. Halprin address particulars of the statute in a variety of ways.

But the argument in and of itself all boils down to the basic issue that it's a violation of the Eighth and Fourteenth Amendments of the United States Constitution because it's arbitrary and capricious and denies the

1 defendant due process and it's also a violation of the Texas
2 Constitution, Article 1, Sections 10, 13, and 19.

3 In that regard, Your Honor, in regard to the
4 fact that this is an arbitrary and capricious statute, we
5 note for the record that there are no guidelines other than
6 the Penal Code by which the State of Texas chooses which
7 cases are tried for capital murder. The Penal Code lays out
8 what is defined as capital murder in the State of Texas and
9 there's a lot of cases that obviously fall into that, as the
10 Court well knows.

11 In regards to that, once a case technically
12 becomes a capital murder under the Statutes of the State of
13 Texas, then what occurs is the District Attorney's Office
14 picks and chooses those cases in which it intends to seek
15 the death penalty. Certainly those are issues that are
16 covered by political reasons, practical reasons, evidentiary
17 reasons, but ultimately the District Attorney's Office in
18 each county in the State of Texas comes up with its own
19 standard or own rationale for which cases that qualify for
20 capital murder should be tried actually for death.

21 Because of that, the frivolous nature and
22 there being no standard across the state or county to
23 county, the statute becomes arbitrary and capricious. Now,
24 within each particular county the District Attorney's Office
25 may have adopted some kind of standard which he believes

1 qualifies cases for death as opposed to nondeath capital
2 cases. However, that in and of itself is arbitrary and
3 capricious.

4 And in regard to that in support of our
5 argument, we would like to offer a file State Cause No.
6 F02-00756. That is a case out of Dallas County that is
7 currently on appeal. This is the original trial jacket. I
8 will be glad to get the clerk to sponsor this particular
9 exhibit, unless the State -- they have not had a chance to
10 review this particular document, Judge. But it is a file.

11 What we intend to do is offer a certified copy
12 of the file. This case, as I stated, is currently on
13 appeal. The record of that case is being prepared at this
14 time and is not available at this time for filing since the
15 court reporter hasn't finished it.

16 THE COURT: What's the style of the case?

17 MR. KING: Styled the State of Texas
18 versus Vincent Edward Aguirre. Mr. Aguirre was charged with
19 capital murder in Dallas County on or about for an offense
20 that occurred on or about March 1st, 2002.

21 And the facts of the case, just briefly, are
22 that there are three individuals allegedly murdered by Mr.
23 Aguirre. There's a man, two pregnant women, and a
24 four-year-old boy that was actually shot, but has not died.
25 The evidence in this case ties by DNA blood samples from the

1 scene from the deceased to Mr. Aguirre. Allegedly the
2 weapon is found within his possession and is matched
3 ballistically to the individuals at the scene of the
4 offense. And Mr. Aguirre was tried and convicted in Dallas
5 County. His case is on appeal for the offense of capital
6 murder.

7 The point of this is that it is alleged that
8 he was the shooter of these three individuals in Dallas
9 County, in and of himself, along with the shooter of the
10 four-year-old boy that was shot. The State of Texas did not
11 choose to seek death in this case.

12 Now, we have a situation with Mr. Halprin
13 where it's alleged that either acting by himself or as a
14 party and we believe that the evidence is going to show that
15 it would be the best the State can show is acting by a party
16 that he is going to be tried and the State is seeking death
17 for the death of Officer Hawkins. They're seeking death on
18 behalf of Mr. Halprin.

19 Clearly the -- an individual who intentionally
20 causes the death of three individuals and shoots a
21 four-year-old child on one hand and an individual who is a
22 party to an offense where somebody shoots and kills a police
23 officer during the course or kills an individual during the
24 course of a robbery or shoots a police officer, as alleged
25 in this indictment, clearly three deaths certainly are a

1 persuasive argument that the District Attorney's Office
2 picks and chooses which cases it intends to seek for death.
3 And it's such an arbitrary and capricious manner as to be
4 violative of the Eighth and Fourteenth Amendments of the
5 United States Constitution, Article 1, Section 10, 13, and
6 19 of the Texas Constitution.

7 And that would be our objections in regard to
8 these unconstitutional motions that we have filed in
9 reference to the statute. And we would offer as -- and,
10 honestly, Judge, I don't know how we're going to mark
11 anything anymore or where we're going to start marking
12 things for purposes of the trial, since this is a hearing
13 outside the presence of the jury.

14 THE COURT: Ask the Court Reporter to
15 give you the next number up and keep track.

16 COURT REPORTER: No. 21.

17 MR. KING: We would mark this exhibit and
18 the contents thereof as Defense Exhibit 21. Further, we
19 would offer when it is completed the certified record of the
20 trial transcript to flush out the facts of this case and
21 show the standard of evidence that applied in that case,
22 what evidence was available, what the State put on in that
23 case, to show that the seeking of death in Dallas County is
24 arbitrary and capricious in violation of the amendments as
25 we have suggested.

1 THE COURT: I'm just trying to limit the
2 amount of paper and exhibits that are involved in this case.

3 MR. KING: I have discussed with the
4 court reporter in that Court, whether or not she can put
5 that on a CD. It very well may be possible that that can be
6 done, Your Honor. And if so, that's what we would offer in
7 lieu of the actual physical transcript itself.

8 MS. SMITH: We have no objection to those
9 exhibits, Your Honor.

10 THE COURT: Once again, you may not have
11 an objection, but that's hours and days of work for somebody
12 to be able to make the point that you have already outlined
13 on the record. Isn't it possible simply to offer the
14 judgment and sentence, the indictment, what we would refer
15 to as a blue back information contained in the blue back to
16 make sure the affidavit is in there? And then because
17 that's a public record, if someone chose to go and review
18 the reporters record or the clerks record, they could do so.

19 MR. KING: Judge, my concern is that the
20 Court of Criminal Appeals, should there be a conviction in
21 the State of Texas against Randy Halprin, and should Mr.
22 Halprin be sentenced to death, it's going to the Court of
23 Criminal Appeals, my concern would be that since that was
24 not offered into evidence, they would say it couldn't be
25 considered for some particular reason. So out of an

1 abundance of caution we're making that offer.

2 And we're aware of the burden we're placing on
3 the Court in this matter and we're not trying to overburden
4 the record or overburden the Court of Criminal Appeals.
5 They would have it at their leisure to review it, should
6 they need to review it.

7 We're just making sure that if the issue boils
8 down to how were the facts of that case distinguishable from
9 any other capital murder case? Maybe -- I don't want to get
10 into an argument where they go, well, if we had the record,
11 we might have seen where there was a lacking of evidence and
12 that's why the State didn't seek death or something along
13 those lines. And we're trying to avoid that kind of
14 argument to be made in that particular record.

15 So we would offer the record once it is
16 completed.

17 MS. SMITH: The problem with that is this
18 Judge can't review it before he makes his ruling today.

19 MR. KING: That is very true. That is
20 very true. But the Court can certainly on a motion for new
21 trial in this case reconsider that motion and then grant
22 that motion if it had the benefit of the record at that
23 point in time. And I anticipate that record is going to be
24 ready within about 30 or 40 days.

25 MS. SMITH: Why don't you offer it at the

1 motion for new trial, then?

2 MR. KING: I wish to offer it now.

3 THE COURT: At this point for Defense
4 Exhibit No. 21, I will admit into evidence the indictment,
5 the judgment, the sentence, the affidavit outlining the
6 basis for the indictment, and any other certified documents
7 that are readily attainable today. If you wish to
8 supplement the record on a motion for new trial, you may do
9 so. But I'm not going to be chasing the courthouse for a
10 bunch of documents.

11 MR. KING: No, I understand, Judge.

12 THE COURT: If you wish to have the clerk
13 certify documents contained in the court file today, mark
14 those as 21. If you wish to supplement the record, do so
15 with something that I have in hand.

16 MR. KING: Very good, Your Honor. I will
17 be glad to do that.

18 THE COURT: Response to the argument
19 proposed by the defense.

20 MS. SMITH: In addition to your rulings
21 on the confession, the arrest, and the pretrial
22 identifications, are you also going to be ruling on the
23 validity of the search warrant of the RV and the vehicles?

24 THE COURT: I knew there was something
25 else.

1 MS. SMITH: That just came to me in
2 response to the defense's motion to set aside the indictment
3 based upon the unconstitutionality of the death penalty
4 statutes, the plethora of complaints alleged in the motion
5 have been repeatedly addressed by the Court of Criminal
6 Appeals and consistently the statute has been upheld.

7 That's the sum of my argument to that.
8 There's really not much more to offer.

9 As for the defense's complaint that we have
10 arbitrarily decided to seek death against his client,
11 counsel hasn't shown any purposeful discrimination against
12 his client. The record in the Aguirre case certainly
13 doesn't show -- in one case that we don't seek the death
14 penalty doesn't show in all the other cases that we seek the
15 death penalty that we have been discriminatory.

16 As a matter of fact, in all other Texas Seven
17 cases we have sought the death penalty. I think that
18 certainly rebutts any claim of discrimination against Mr.
19 Halprin.

20 MR. KING: We would only respond to the
21 discrimination is that they are seeking the death penalty
22 against Mr. Halprin when they chose not to seek it against
23 other individuals whose conduct would clearly be far more
24 heinous than that of Mr. Halprin's. You have an individual
25 who is a shooter and has taken three lives and shot a

1 four-year-old child as opposed to someone who is merely a
2 party to a capital murder offense.

3 And clearly the fact that the State seeks not
4 to seek the death penalty against the shooter of three
5 individuals and a four-year-old child and does seek the
6 death in a highly publicized case means they are choosing
7 and picking cases in which to seek death based on other
8 matters other than be the facts of the case in and of
9 themselves. And that makes it arbitrary and capricious.

10 THE COURT: Thank you, Mr. King. Motion
11 to Set Aside the Indictment Because of the Unconstitutional
12 Statute denied. Motion to Determine Constitutionality of
13 37.071(2)(b)(2), objections to the party's charge. I
14 believe that you have already touched on this issue. Motion
15 denied.

16 Motion to hold unconstitutional 37.071,
17 Section (2)(e) and (f), failure to require mitigation to be
18 considered. You have got two different motions. Would you
19 like to briefly summarize your issues?

20 MR. KING: Simply, Judge, that the
21 statute is unconstitutional because it fails to require that
22 mitigation be considered. And as opposed to the jury is
23 required to consider all the evidence in deciding whether
24 the defendant is guilty or not guilty, this particular
25 statute doesn't require that in the most important phase of

1 a capital murder trial. So we believe it's
2 unconstitutional.

3 MS. SMITH: Your Honor, the statute
4 requires that the jury consider all the evidence in
5 determining the mitigation issue. The statute certainly
6 meets constitutional standards.

7 THE COURT: Both of those motions are
8 denied. Next motion just referred to as the penery issue?

9 MR. KING: Judge, we just feel, once
10 again, the statute doesn't require the State to have a
11 burden of proof on the mitigation matters. The statute
12 doesn't require the jurors to be convinced beyond a
13 reasonable doubt, and in regard to the punishment issues and
14 feel the statute is unconstitutional.

15 THE COURT: Motion denied. Motion in
16 Limine on the photographs. We have some autopsy photographs
17 that have been offered in previous trials that have been
18 objected to and the Court has sustained those objections.

19 Mr. Shook, does the State intend to continue
20 to try to offer the objectionable photographs of the
21 autopsy?

22 MR. SHOOK: Well, I think the one that's
23 been sustained I took out of the mix. If it's still in
24 there, we can take it out, Judge, but I was looking through
25 it and it was there on Friday when I was going through the

1 photographs. But I believe that's the side head shot where
2 there are two similar ones. We will take that one out
3 that's been objected to.

4 THE COURT: Mr. King, if you would like
5 to review the autopsy photographs, not right now, but if you
6 have a specific objection, I will take it up. So basically
7 your motion in limine is granted, subject to your review.
8 But I don't want you to take the time looking at them in
9 front of the doctor or in front of the jury. Look at them.

10 Motion in Limine on the character of the
11 complainant and the victim impact. Obviously, we're going
12 to hear from Ms. Hawkins or Jayne Hawkins?

13 MR. SHOOK: Jayne Hawkins.

14 THE COURT: She has testified in the four
15 previous trials at some phase. She is aware of the bounds
16 that she can stay within. I will grant this motion.

17 MR. KING: We ask the Court to instruct
18 the State to instruct their witness.

19 THE COURT: If it wasn't the fifth time,
20 I would instruct the witness myself. But she understands
21 where she can go. Motion granted. Motion For Discovery of
22 Victim Impact Testimony. The only issue that's come up on
23 this is the videotape of the officer making a last traffic
24 stop. The videotape was found in the patrol car. That's
25 the specific objection in the past.

1 Do you have something that's in addition to
2 that? The State is offering the videotape simply to show
3 how the officer was dressed.

4 MR. KING: No, we have nothing other than
5 that.

6 THE COURT: The Court will allow the
7 videotape at the appropriate time to be displayed to the
8 jury with no audio. Motion denied.

9 Motion to Define Beyond a Reasonable Doubt.
10 The Court of Criminal Appeals has ruled on this. It will be
11 denied.

12 Motion in Limine to Preclude Testimony About
13 the Violent Acts By Others.

14 MR. KING: Judge, that's really a
15 punishment motion. I don't know if the Court wishes to hold
16 it.

17 THE COURT: I will hold the last two
18 motions and rule on them. The bottom line on the arrest,
19 the Court having reviewed all the arrest warrants in this
20 case find that the warrants were valid and legal and the
21 arrest of the defendant was lawful.

22 The subsequent arrest incident to arrest --
23 search incident to arrest was legal whether or not they had
24 the search warrant. I find the search warrant was also
25 properly obtained and legal. After the search warrant was

1 conducted, the detective flew up to Colorado, interviewed
2 Mr. Halprin. The Court has reviewed the defendant's written
3 voluntary statement. The Court finds that the defendant
4 knowingly and intentionally waived his rights to counsel
5 prior to making the statement. It was a long, detailed
6 statement.

7 The issue regarding counsel being on the
8 outside, wanting in, is not relevant in this matter. The
9 Court will admit the statement.

10 Having made that ruling, there are certain
11 issues contained within the statement the Court has
12 previously excluded from the jury during the first phase of
13 the trial. Specifically there are some issues regarding
14 extraneous offenses in Harris County.

15 Do you wish to have the Court remain
16 consistent on these 403, 404(b) issues or do you wish to
17 allow the entire -- do you want -- you understand the
18 portion I'm referring to?

19 MR. KING: Yes, I do, Your Honor.

20 THE COURT: Knowing that the statement is
21 going to be admitted, do you wish for the entire statement
22 to be admitted or do you wish for the Court to exclude the
23 extraneous offense?

24 MR. KING: We will let the entire
25 statement in.

1 THE COURT: The entire statement would be
2 admitted before the jury. The other issue before the Court
3 is the photo lineup and the way it was arranged and
4 conducted. The Court has reviewed Dr. Malpass' extensive
5 research in this area and finds those probative, without an
6 overt showing of suggestion -- how many photos were in the
7 lineup? Fifteen?

8 MR. KING: Fifteen.

9 THE COURT: And having heard the
10 testimony of a lot of witnesses, and only from the hindsight
11 in reviewing all the testimony, that the photo lineup was
12 conducted in such a way that there's no two witnesses that
13 identify the same people being in the store. Each witness
14 identified some, but not all of the participants.

15 Mr. Shook, is that a fair statement under all
16 the trials we've had so far? There's no one witness that
17 identified the same individuals as any other witness.

18 MR. SHOOK: No. Some witnesses did
19 identify the same individual.

20 THE COURT: They did?

21 MR. SHOOK: Yes. Some could identify
22 four, some two, and some three, and some of those
23 overlapping.

24 THE COURT: There's some overlapping.

25 MR. SHOOK: Right.

1 THE COURT: But each witness -- it wasn't
2 suggestive in such a way that there was a pattern of conduct
3 that you could look at.

4 MR. SHOOK: Oh, the same witnesses, no,
5 Judge.

6 THE COURT: There's no pattern showing
7 there was any suggestive nature of the lineup. If there
8 was, I would be jumping on this with both hands.

9 MR. KING: Well, Judge, we only respond
10 in that regard that the lineup is probably -- the problem
11 with the lineup is that it is suggestive and leads to the
12 wrong identifications. And there are several witnesses who
13 identified individuals as individual A when it's obvious to
14 everybody after the course of four trials here that they
15 misidentified that individual, saying they were that person
16 when they thought they were somebody else. And that's the
17 issue here.

18 I would note for the record that I believe
19 there's only one individual at the Oshman's that identified
20 Mr. Halprin out of the lineup and that was a Sandra
21 Rodriguez. I think that's the only -- and I think that's
22 the only witness who actually picked Mr. Halprin out of a
23 lineup. So in that regard we only have one individual that
24 we're really referring to, Judge, and that we would ask for
25 a hearing outside the presence of the jury on that

1 individual when she is called to ascertain whether or not
2 her in-court identification is tainted by the out-of-court
3 presentation of the lineup and any suggestive nature by the
4 officers involved.

5 THE COURT: We shall hold that issue.
6 Witness Rodriguez, you said?

7 MR. KING: Sandra Rodriguez.

8 THE COURT: Sandra Rodriguez.

9 MR. SHOOK: Judge, Wes Ferris, if you
10 will recall at the Garcia trial and other trials, he has
11 identified four, Rivas, Rodriguez, Garcia, and Newbury and
12 said he was pretty sure of Halprin and Harper. And I'm sure
13 he will testify to the same at this time. He said he was
14 not one hundred percent, but was pretty sure of those.

15 MR. KING: We would include him as well.

16 THE COURT: Include Mr. Ferris.

17 MR. SHOOK: He will be testifying No. 2,
18 Judge.

19 THE COURT: Ask Mr. Ferris to come in,
20 please.

21 MS. SMITH: Could you -- for record
22 purposes, could you judicially note that we tendered further
23 exhibits to you on the suppression issues. The State
24 tendered Sheriff Fehn's and Todd Evans' testimony, as well
25 as certified copies of two of the arrest warrants.

1 THE COURT: That is correct. The stack
2 of exhibits now is about eight inches.

3 [Out of the presence of the jury.]

4 WESLEY FERRIS,
5 having been duly sworn, was examined and testified as
6 follows:

7 DIRECT EXAMINATION

8 BY MR. SHOOK:

9 Q. Tell us your name, please.

10 A. Wesley Ferris.

11 Q. You have testified in some other trials
12 involving this incident; is that correct?

13 A. Yes, sir.

14 Q. And at the time of this offense you were one
15 of the managers at the Oshman's store?

16 A. Yes, sir, I was.

17 Q. You were present during the robbery of the
18 Oshman's store when several men came in and held the
19 employees at gunpoint; is that correct?

20 A. Yes, sir.

21 Q. The Oshman's store at that time, was it well
22 lit? You could see everyone, what the person's movement
23 was, that sort of thing?

24 A. Yes, sir.

25 Q. Did you get a good look at the individuals

1 that were robbing the employees?

2 A. Most of them, yes, sir.

3 Q. Later that evening did the police take you to
4 the Irving Police Department and show you a photo lineup?

5 A. Yes, sir, they did.

6 Q. Okay. Let me know you what has been marked as
7 State Exhibit 45 are. These the photographs that you viewed
8 that day?

9 A. Yes, sir.

10 Q. Is this how they were arranged?

11 A. Yes, sir.

12 Q. Could you tell the Court where you saw the
13 photo lineup?

14 A. It was on an eight-foot table in the police
15 headquarters.

16 Q. And what instructions were you given when you
17 viewed the lineup?

18 A. They told me to take my time, look at the
19 pictures, and look at features that don't change, such as
20 eyes and just take my time and be sure of the ones that I
21 picked.

22 Q. Were you able to make some selection that day?

23 A. Yes, sir, I was.

24 Q. Which ones do you recall selecting that day?

25 A. I picked out positively No. 4.

1 Q. Is that whom you later learned was George
2 Rivas?

3 A. Yes, sir, it is.

4 Q. Okay.

5 A. No. 7.

6 Q. No. 7 is actually who you later learned was
7 Michael Rodriguez?

8 A. Yes, sir.

9 Q. Who else?

10 A. No. 9.

11 Q. No. 9 and you later learned his name to be --
12 was that Larry Harper?

13 A. I didn't pick out No. 9. It was 11 and 15.

14 Q. You learned 11 to be Donald Newbury?

15 A. Yes, sir.

16 Q. And 15 was --

17 A. Joseph Garcia.

18 Q. No. 9, did you identify him that day?

19 A. I identified No. 9 as a possible. They asked
20 me if I would be able to identify him in court and I wasn't
21 sure at the time that I would or not.

22 Q. Who did you think No. 9 was?

23 A. I believed it to be Mr. Harper.

24 Q. Was he one of the individuals dressed as a
25 security guard?

1 A. Yes, sir.

2 Q. And did you see any other photographs which
3 you were pretty sure of, but not positive?

4 A. Yes. No. 2.

5 Q. And did you later learn his name to be Randy
6 Halprin?

7 A. Yes, I did.

8 Q. Do you believe No. 2 was one of the
9 individuals in the store?

10 A. Yes, sir.

11 Q. Did you make any other IDs at all or was that
12 it?

13 A. That was it, sir.

14 Q. And when you said on Mr. Harper, Mr. Halprin
15 you were pretty sure; is that right? And have you seen the
16 photographs since that time?

17 A. Yes, sir, I have.

18 Q. Where was that?

19 A. I saw him on the news the next day and I've
20 seen him in the courtroom in here and on TV after they were
21 apprehended.

22 Q. At any time during when you were looking at
23 the photo lineup, did any of the detectives suggest or tell
24 you who to pick out?

25 A. No, sir, they did not.

1 Q. And were any of the other witnesses there when
2 you made the selections?

3 A. Not in the room. They were outside in another
4 room.

5 Q. Do you see Mr. Halprin here today in court?

6 A. Yes. He's sitting right over there.

7 Q. Is he one of the individuals that you believe
8 or you said you were pretty sure of?

9 A. Yes, sir.

10 THE COURT: Mr. Ashford?

11 CROSS-EXAMINATION

12 BY MR. KING:

13 Q. Mr. Ferris, good morning. My name is Ed King.

14 MR. SHOOK: Pardon me, one more question.

15 Q. (By Mr. Shook) How close were you to these
16 individuals?

17 A. At the time when they announced it was a
18 robbery, within five to six feet.

19 Q. At various times during the robbery were you
20 closer at different --

21 A. On some of them, yes, sir, but not all of
22 them.

23 Q. The first time you saw their photographs on
24 TV, was that after the robbery?

25 A. Actually, no. I saw it right after they --

1 when they first announced their escape from -- when they
2 escaped from prison. I didn't give it much thought because
3 of where it happened at.

4 Q. Did you identify them from the photographs
5 based on what you had seen on TV prior to the robbery or
6 your observations from the robbery itself?

7 A. Observations from the robbery itself.

8 MR. SHOOK: That's all we have, Judge.

9 CROSS-EXAMINATION

10 BY MR. KING:

11 Q. Good morning, Mr. Ferris.

12 A. Good morning.

13 Q. Mr. Ferris, my name is Ed King. We have never
14 met before, have we?

15 A. No, sir.

16 Q. Mr. Ferris, you readily identified Randy
17 Halprin just a second ago just from sitting in there. You
18 leaned over and pointed right at him. Is that because you
19 were called here for the Randy Halprin trial?

20 A. No, sir, because I recognized him from being
21 there that night and then the photo lineup I saw that night.

22 Q. Okay. This is your fifth trial to testify in;
23 is that correct?

24 A. Yes, sir, it is.

25 Q. You have been asked these same and similar

1 questions in regards to how you recognize people, would that
2 be fair to say, by a variety of the criminal defense lawyers
3 and prosecutors?

4 A. Yes, sir.

5 Q. All right. Can you tell me what it was that
6 you observed about the individual you tentatively have
7 identified as Mr. Halprin in the store that night? With
8 everything else going on, what was it that you noticed about
9 him, how he was dressed, what he was doing?

10 A. That night -- are you talking about that night
11 of the robbery?

12 Q. Yes, sir, please.

13 A. Okay. That night when Mr. Rivas announced
14 this was a robbery and I turned around to face him, he told
15 us that the customers were with him. And I turned and
16 looked over my shoulder and I turned and looked at the other
17 people in the store and I noticed there were six to -- I
18 thought six to eight people in the store at that time. And
19 I got a good glimpse. I got a good look at them all because
20 they all had guns. I knew which ones they were and which
21 ones were my employees.

22 Q. So everybody had guns, all six, all eight of
23 those individuals had guns?

24 A. Yes, sir.

25 Q. You sure about that?

1 A. Yes, sir.

2 Q. Okay. How was Mr. Halprin dressed?

3 A. The first time I believe I saw him, he was
4 just dressed in regular, I think just dark clothing, maybe a
5 pair of bluejeans on and a dark shirt. But I don't really
6 recall how he was dressed that night.

7 Q. Let me ask you this. You say that you turned
8 around and you saw individuals, six to eight individuals,
9 with guns. You are saying that the people you thought were
10 customers that all had guns, you are not sure what the
11 number is, but those people had guns?

12 A. Yes, sir.

13 Q. It's entirely possible that Mr. Halprin was
14 out of sight doing something else at that point in time. Is
15 that fair to say?

16 A. No, he wasn't out of sight because I saw him
17 with a gun.

18 Q. You are saying you saw six individuals or
19 eight individuals and you got a good look at all of them,
20 just glancing over your shoulder?

21 A. I turned around and faced them and looked,
22 sir. And I stood there and then I turned back and faced Mr.
23 Rivas.

24 Q. Okay. And turned around and looked and then
25 turned around and faced Mr. Rivas, that doesn't take but a

1 couple of seconds, did it, Mr. Ferris?

2 A. Probably 15 to 20 seconds.

3 Q. All right. And you are not sure the number of
4 people that you saw?

5 A. No, sir. At that point I said I thought that
6 night I thought there were six to eight people in the store.

7 Q. So your perception is whoever you saw, they
8 all had guns?

9 A. Yes, sir.

10 THE COURT: Anything further, Mr. King?

11 Q. (By Mr. King) In the photographs you were
12 shown, is there any facial hair you noticed that night on
13 Mr. Halprin?

14 A. I did not notice any facial hair on any of
15 them that night.

16 Q. All right. What kind of gun, allegedly, did
17 Mr. Halprin have?

18 A. I don't know specifically what type of gun
19 because that night, like I said, I only looked for 15 to 20
20 seconds. I thought some of them had semiautomatics and some
21 of them had revolvers.

22 Q. Did you initial a card of any kind to reflect
23 which photographs you picked out of the lineup, Mr. Ferris?

24 A. I initialed a sheet of paper with the ones
25 that I positively identified.

1 MR. KING: Judge, I have a copy of
2 everybody's signature card except for Mr. Ferris. And
3 that's why I asked him that particular question. I was
4 trying to -- Mr. Ashford believes he may have it. So if the
5 Court will give him a second to make sure.

6 THE COURT: We're off the record.

7 [Off the record]

8 MR. KING: Approach the witness, Your
9 Honor?

10 THE COURT: You may.

11 Q. (By Mr. King) Mr. Ferris, let me show you
12 what is going to be marked Defense Exhibit No. 22.

13 MR. KING: Judge, this is the State's
14 copy. This may be the only copy. I guess it's a Xerox copy
15 so they have got an original?

16 MR. SHOOK: That's my copy.

17 MR. KING: This is the State's copy. We
18 ask to be able to substitute a copy of this.

19 THE COURT: Make a xerox of it.

20 Q. (By Mr. King) Mr. Ferris, let me show you
21 what has been marked as Defense Exhibit No. 22 and ask you
22 whether or not you recall -- I don't know how it would have
23 looked on that day, but does that look like something that
24 you indicated which photographs you identified that day?

25 A. Those are the ones that I identified

1 positively, yes, sir.

2 Q. Okay. And those would be 4, 9, 11, and 15; is
3 that correct?

4 A. Yes, sir.

5 MR. KING: Offer Defense Exhibit 22 for
6 purposes of this hearing, Your Honor.

7 THE COURT: No. 22 shall be admitted.

8 MR. SHOOK: No objection.

9 Q. (By Mr. King) You did not make a tentative
10 identification and indicate that on that document, did you?

11 A. Not on that document, no, sir, I did not.

12 Q. Let me show you what has been marked as
13 Defense Exhibit No. 23, then, which is a typed statement
14 which appears to have a signature at the bottom. Let me
15 show you the signature at the bottom. Does that appear to
16 be your signature?

17 A. Yes, sir, it is.

18 Q. Do you recall signing your name below a
19 paragraph pertaining to the identification of individuals
20 you saw that night at the store?

21 A. Yes, sir.

22 Q. Okay. And I presume that you read this over
23 before you signed your name to it; is that correct?

24 A. Yes, sir.

25 Q. All right. Now, in -- let me --

1 MR. KING: We would offer Defense 23 for
2 purposes of this hearing, Your Honor.

3 MR. SHOOK: No objection.

4 THE COURT: No. 23 shall be admitted.

5 Q. (By Mr. King) Is there anything in 23 that
6 indicates that you tentatively identified Randy Halprin as a
7 gunman that night or at the store that night?

8 A. No, sir, there is not.

9 Q. Thank you very much, Mr. Ferris.

10 MR. KING: Nothing further of this
11 witness.

12 MR. SHOOK: That's all we have.

13 THE COURT: Thank you, Mr. Ferris.
14 Mr. King, do you have an objection to his testimony?

15 MR. KING: We do. It's pretty clear
16 there is nothing to indicate that at the time Mr. Ferris
17 says he identified tentatively Mr. Halprin that he did so.
18 His immediate identification of Mr. Halprin from the witness
19 stand after he walked in shows that as a result of him
20 testifying in the last four trials that he automatically
21 presumes that there's an individual sitting at counsel
22 table, that is the individual that he believes to be Mr.
23 Halprin and he's just identifying him from something other
24 than what occurred that night.

25 Because of the plethora of news media events

1 and publications, photographs on television, and otherwise,
2 it's obvious that the lineup was highly misleading in the
3 determination of who was at the scene and who was doing what
4 that night.

5 And we feel that his in-court identification
6 of Mr. Halprin is now tainted by matters other than what
7 occurred that night. There's nothing to show that he
8 identified tentatively for law enforcement in their records
9 Mr. Halprin. And we object to his in-court identification.

10 MR. SHOOK: Judge, I think Mr. Ferris' ID
11 is based on obviously what he observed at the Oshman's that
12 day. He had plenty of time to -- the robbery went on for
13 half an hour. The Court has seen Mr. Ferris testify a
14 number of times and he's testified generally the same that
15 he identified four and was pretty sure on the other two at
16 the time he looked at the photographs.

17 And as far as the documents that Mr. King has
18 admitted, those are only on obviously what he was positive
19 that day. But the Court heard his testimony. He was sure
20 of the others had guns and clearly had an opportunity to see
21 Mr. Halprin.

22 THE COURT: Mr. King, it's very difficult
23 for any witness to block out any particular segment of time
24 as to how he made the identification and makes the
25 identification here today. Certainly the jury, I believe,

1 should be allowed to weigh his identification and weigh his
2 opportunity to witness and view the events that occurred in
3 the Oshman's store and you are certainly welcome to
4 cross-examine him on that issue.

5 So defense motion to exclude Mr. Ferris'
6 in-court identification of the defendant is denied.

7 MR. KING: Your Honor, so I can clarify
8 one other matter for the record and just -- I apologize to
9 the Court. But in regards to the Court's ruling on the
10 voluntary statement issue, it's my understanding, correct me
11 if I'm wrong, please, Your Honor, the Court believes that
12 the entire statement is voluntary. Is that correct, Your
13 Honor?

14 THE COURT: Yes.

15 MR. KING: And at either the
16 guilt/innocence phase of the trial, the Court would allow
17 some or all of the statement and depending on what
18 objections the defense would make, but at least the Court
19 would allow the State to offer it in at that point; is that
20 correct?

21 THE COURT: Yes, sir.

22 MR. KING: And then at the punishment
23 phase of the trial, I anticipate that the Court's ruling
24 would be that the whole of the document is admissible; is
25 that correct?

1 THE COURT: That's correct.

2 MR. KING: All right, Your Honor. Having
3 made our objections to the voluntariness of the statement
4 our -- when the Court inquired as to whether or not we had
5 any objections to what is contained in the statement, we do
6 object to the statement is not voluntary. And that is still
7 our objection.

8 That being said, we have no objection, since
9 the State intends to offer the statement into evidence and
10 since the Court's ruling is that the statement is
11 admissible, we have no objection to the contents, the whole
12 contents of the statement coming in. But we still object to
13 the voluntariness issue of it and the denial of right to
14 counsel.

15 THE COURT: Yes, sir.

16 MR. KING: I think Mr. Shook and I have
17 discussed that briefly. I just want to make sure the record
18 is clear on that, Your Honor, that we are preserving that
19 objection. But since the Court is allowing the majority of
20 the statement to come in, or a big chunk of it to come in,
21 so we feel for the benefit of the jury all of it should come
22 in. And that's our trial strategy in that regard.

23 THE COURT: Yes, sir. Sheriff, bring us
24 a jury.

25 (Jury in)

1 THE COURT: Good morning. Everybody else
2 be seated. I need the jury to remain standing. I have to
3 give you an oath to be a juror in this particular case.
4 Please raise your right hands.

5 [At this time the jury was sworn by
6 the Court.]

7 THE COURT: Thank you. You may be
8 seated. Mr. Shook, would you like to present your
9 indictment.

10 MR. SHOOK: May it please the Court.
11 Members of the jury, again my name is Toby Shook. I'm the
12 lead prosecutor assigned to this case. At this time it's my
13 duty to read to you the true bill of indictment, which reads
14 as follows.

15 "True bill of indictment, in the name and by
16 the authority of the State of Texas, the Grand Jury of
17 Dallas County, State of Texas, duly organized at the January
18 Term AD, 2001, of the 282nd Judicial District Court, Dallas
19 County, in said Court at said term do present that one Randy
20 Ethan Halprin on or about the 24th day of December AD, 2000,
21 in the County of Dallas and said State did unlawfully then
22 and there knowingly and intentionally cause the death of
23 Aubrey Hawkins, an individual, hereinafter called deceased
24 by shooting the said deceased with a firearm, a deadly
25 weapon, and the said deceased was a peace officer, namely, a

1 City of Irving police officer then and there acting in the
2 lawful discharge of an official duty and said defendant then
3 and there knew the said deceased to be a police officer; and
4 further unlawfully then and there intentionally caused the
5 death of Aubrey Hawkins, an individual, hereinafter called
6 deceased by shooting the said deceased with a firearm, a
7 deadly weapon, and the defendant was then and there in the
8 course of committing or attempting to commit the offense of
9 robbery of Wesley Ferris, against the peace and dignity of
10 the State, signed Bill Hill, Criminal District Attorney of
11 Dallas County, Texas, and signed by the Foreman of the Grand
12 Jury."

13 MR. ASHFORD: Your Honor, ladies and
14 gentlemen of the jury, Mr. Halprin pleads not guilty.

15 THE COURT: Will the State have an
16 opening remark?

17 MR. SHOOK: We do, Your Honor. May it
18 please the Court?

19 THE COURT: Mr. Shook.

20 MR. SHOOK: Members of the jury, almost
21 two and a half years ago Aubrey Hawkins was a living,
22 breathing human being. On December 24th, 2000, Christmas
23 Eve, he came on duty as an Irving police officer assigned to
24 the Patrol Division. Since it was Christmas Eve and he was
25 working the evening shift, he had made arrangements to have

1 christmas Eve dinner with his family on his dinner break
2 that night.

3 At about 5:30 that evening he had arranged to
4 meet his family at the Olive Garden Restaurant, which is
5 located in Irving, Texas, just off Highway 183. On the
6 other side of the highway is the Oshman's Superstore.

7 At the time he met his mother, Jayne Hawkins,
8 who brought her mother, Aubrey Hawkins' grandmother, who was
9 92 years old. He met his wife, Lori, there with his
10 nine-year-old son, Andrew. And sat down to eat.

11 They were able to spend almost an hour
12 together, but calls backed up and around 6:25 that evening
13 Aubrey Hawkins to leave. He had to go answer calls. He
14 said goodbye to his family. They saw him drive off in his
15 squad car, go down the service road next to 183 in the
16 direction of the Oshman's. That's the last time his little
17 boy, Andrew, would see him alive.

18 Approximately five minutes from that time
19 Aubrey Hawkins would be lying, dying, behind that Oshman's
20 store, shot 11 times, driven over by a car, run over by a
21 car, the victim of an ambush carried out during a robbery of
22 that Oshman's.

23 Over the course of the next several days the
24 State of Texas will prove that this man, Randy Ethan
25 Halprin, is responsible for that crime along with his

1 accomplices. We will prove that to you by bringing you
2 eyewitnesses to that Oshman's robbery who can tell you how
3 the robbery occurred, the different roles of these
4 individuals. We will do that by presenting you physical
5 evidence which ties the defendant to this crime, proving it
6 beyond a reasonable doubt. We would do so by giving you the
7 defendant's own words in a voluntary statement in which he
8 admits being there at the Oshman's, participating in that
9 crime, and we do so by scientific evidence. You will hear
10 from a firearms examiner who will tell you that a minimum of
11 five different weapons were used in that ambush.

12 The evidence will show that on December 13th,
13 2000, the defendant, Mr. Halprin, along with his
14 accomplices, George Rivas, Michael Rodriguez, Donald
15 Newbury, Patrick Murphy, Joseph Garcia, and Larry Harper,
16 escaped from the Connally prison unit which is located about
17 60 miles southeast of San Antonio.

18 When they escaped they took with them 16
19 weapons, a .12 gauge pump shotgun, an AR-15 assault rifle,
20 and fourteen .357 revolvers with ammunition. These are the
21 weapons used to murder Aubrey Hawkins.

22 They left that area. They went to Houston.
23 They eventually come to the Dallas area. Their goal in
24 coming here was to find a large store to rob. Their target
25 would be guns, money, ammunition, and clothes. The evidence

1 will show that their target became the Oshman's located
2 right there on Highway 183.

3 It will become clear to you from our voir dire
4 with you why we spent so much time on the law of parties and
5 about conspiracy, why the law holds groups of individuals
6 responsible when they actively participate in a crime.
7 Because you will learn from the evidence that this was not a
8 robbery done on a whim, just on a spur of a moment, but one
9 that was planned out over days in great detail.

10 It was so complex and so large in its scope,
11 that it would take all seven of these individuals acting as
12 a team, each one with an individual role to pull off. Take
13 several days to plan. The evidence will show that Randy
14 Halprin went in several days before the robbery to get a
15 layout of the Oshman's, he along with Michael Rodriguez.

16 The plan was so detailed that it would call
17 for them to secure security guard uniforms for two of the
18 individuals, complete with badges and hats, to go in
19 undercover as security officers. George Rivas and Larry
20 Harper would fill those roles. They would all have
21 walkie-talkies with which to communicate with one another.
22 They would use code names.

23 They would have a police scanner they would
24 have tuned in to the Irving Police Department. One as a
25 lookout. They would think of every alternative that would

1 happen and anticipated that the police would arrive and
2 wanted to be prepared for that.

3 They would have two vehicles. One would be an
4 escape vehicle that they parked before the robbery behind
5 the Oshman's across a field. Their plan called for if
6 something went wrong, they could run by foot across that
7 field to that vehicle. If everything went right, they would
8 simply steal one of the employees' vehicles after the
9 robbery, load the items that they had stolen, and meet
10 Patrick Murphy, their lookout, at the rendezvous vehicle
11 after the robbery.

12 They wanted to execute this plan on Christmas
13 Eve at closing time at 6:00 p.m. The plan was so vast that
14 they would need all seven to control 17 employees to take
15 down, pointing the .357 revolvers with them at them. It
16 would take a half hour to complete.

17 Around 5:30 p.m. on Christmas Eve they began
18 to execute their plans as they drove and dropped off their
19 Honda car in that apartment complex. They then drove to the
20 Oshman's, all in one Suburban, and at that time Randy
21 Halprin, along with Michael Rodriguez, entered the store.
22 They were dressed in civilian clothes. They were each armed
23 with a loaded .357 revolver. They had walkie-talkies. They
24 started gathering clothes and acted as if they were
25 shoppers.

1 Shortly after that, Donald Newbury, along with
2 Joseph Garcia, also entered the store. Joseph Garcia goes
3 to the shoe section. Donald Newbury goes for the gun
4 section, again, posing as customers. Both of them armed
5 with .357s.

6 Around ten to 6:00 while Aubrey Hawkins is
7 having his last meal with his family, George Rivas and Larry
8 Harper then enter the store and they are dressed as security
9 guards. They have their guns outside in holsters and they
10 find Wes Ferris, who you will be hearing from, the manager.

11 The story they tell him is they are looking
12 for a grab-and-run gang, a gang that will grab items and run
13 out of the store. They have some photo lineups with them.
14 They want to know if the employees may have seen some of
15 these individuals in the store.

16 George Rivas appears to be the man in charge.
17 He asks Wes Ferris if he has any videotapes, security
18 cameras. Wes Ferris takes him, suspecting nothing at the
19 time, to the video area where he shows him what tapes he
20 has, what cameras are working. At the time George Rivas
21 asked him if they can show these photo lineups when the
22 store closes to all the employees and he agrees to do that.

23 Waiting outside is Patrick Murphy, who is
24 listening to a police scanner and has walkie-talkies and can
25 be in communication. The employees gather up at the cash

1 registers once the store is closed, along with who they
2 think are the last shoppers, all of whom are in this gang.
3 At that time Wes Ferris announces over the intercom that the
4 store is closed, please, if you want to make some purchases,
5 come forward.

6 And it's at that point that George Rivas pulls
7 his weapon out, raises it in the air, and tells everyone
8 this is a robbery. He points it at Wes Ferris, tells him
9 not to try anything. He tells them all that if they shoot
10 one, they are going to kill everyone, that everyone in the
11 store, all the shoppers, are with him.

12 At that time the men, Randy Halprin and the
13 others, have their weapons out. They are in a semicircle
14 around the employees and are pointing weapons at them. They
15 have them put their hands on the front counter and they are
16 searched. One employee is brought from the back with
17 thumbties on. After they are searched, they are lined up
18 and are taken to the back of the store.

19 You will hear from another individual who was
20 waiting outside to pick her fiance up at that time. She was
21 able to look in the store and she saw the individuals being
22 searched. She became obviously somewhat concerned. She was
23 nine months pregnant, shouldn't have been out that day, but
24 had to pick her fiance up. She knew something was wrong,
25 but wasn't sure and went to call her best friend to meet her

1 up at the store at that time.

2 At that same time the employees are put in the
3 back breakroom where they are searched, threatened, their
4 property is taken. Wes Ferris is told to come out with
5 George Rivas. Everyone involved in this gang has an
6 individual role. Some are searching employees; others are
7 gathering weapons; others are gathering property.

8 George Rivas takes Wes Ferris to the front and
9 has him empty the cash register, has him grab the videotape,
10 takes him to the safe and has him open the safe where he
11 gets over \$70,000 worth of cash from three days receipts.

12 He then has Wes Ferris take him to the gun
13 safe that was located back in the storage area. Open that
14 safe where the handguns are held. He then has him go to the
15 gun section and unlock where the shotguns and rifles are.
16 He then takes him to the back, takes his keys for his car,
17 his truck, turns him over to Michael Rodriguez where he's
18 thrown against the wall, forced to his knees and searched.

19 At that time George Rivas then goes outside
20 and talks to an individual who is waiting on an employee,
21 seen by the other women who have -- the girl's friend has
22 arrived. They become suspicious of him when he tries to
23 talk to them and they drive off and call the police.

24 They call in a suspicious activity call,
25 something going on at the Oshman's. And this is the call

1 that Aubrey Hawkins is summoned to at that time.

2 George Rivas drives around to the back. They
3 see that and they tell the 911 operator that. He goes to
4 the back and parks. He tells everyone to come load the
5 stuff out in the back. At that time Randy Halprin gathers
6 the money. He starts making his way back there. Aubrey
7 Hawkins, being so close, arrives very quickly at the front
8 of that Oshman's. Patrick Murphy does his job. He gets on
9 the walkie-talkie and lets everyone know that a police
10 officer is out front.

11 They do not abort the mission at that time.
12 They don't run across the field. They continue with the
13 robbery. Patrick Murphy tells them that the officer is
14 coming around to the back. At that time they are loading up
15 their equipment. Randy Halprin actually goes back in the
16 store to get the rifles.

17 You will learn from the evidence that the
18 Officer Hawkins drives around and parks directly behind the
19 Ford Explorer which is being used by the robbers which
20 belongs to Wes Ferris. When he drives and parks behind that
21 Ford Explorer, he drives right into an ambush and he doesn't
22 have a chance. Gunfire begins immediately.

23 It is rapid and it is continuous and it was
24 without mercy. It comes from all sides. Officer Hawkins
25 does not have a chance to remove his service revolver from

1 his holster to defend himself. You will know from the
2 physical evidence that he was able to get his arm up,
3 because three bullets penetrate that arm. He has it up in a
4 defensive posture. In all 11 bullets will penetrate his
5 body, six bullets to the head, his left eye is shot out,
6 he's shot in the cheek, the neck, the ear, the chest cavity,
7 he's shot in the arm three times, he's shot in the back of
8 the shoulder, and he's shot in the back, a bullet which
9 penetrates his aorta.

10 You will hear from an expert who will tell you
11 that he looks at firearms, trace evidence, and can tell you
12 that the gunshot to the back in his opinion was within six
13 inches. His body is thrown and drug out from the car,
14 thrown to the ground. And as they make their escape, they
15 drive over him and drag him ten feet. They take the time to
16 take his service handgun from his holster and take that with
17 them.

18 You will learn from the evidence that the car
19 was surrounded, that there's gunfire into the hood of the
20 car, two shots coming from different angles on the driver's
21 side, that there are two more shots coming into the driver
22 windshield. There are four more shots coming into the
23 windshield from the passenger side. The drivers window is
24 shot out. There's evidence that some bullets ricocheted off
25 the side of that window. There's a bullet that penetrates

1 his computer, coming in the direction of the drivers window.

2 There are trailers in the back of the Oshman's
3 that are hit bullets, gunfire, three separate bullets. The
4 Ford Explorer, itself, is hit twice. That car was
5 surrounded in an ambush.

6 Randy Halprin and his accomplices then make
7 their escape. They drive off. In their frenzy and so close
8 and intense, two of them are wounded, George Rivas, who is
9 shot through his stomach and a flesh wound in the thigh, and
10 Randy Halprin, himself, who is wounded in the toe.

11 They are able to make off with 44 weapons; 34
12 handguns, 7 shotguns, and 3 rifles. They are able to take
13 \$70,000 in cash, along with clothing and lots of ammunition.
14 They leave behind one of their guns, which has been fired
15 once, a screwdriver, and a walkie-talkie, and Aubrey
16 Hawkins.

17 Police arrive soon as backup. There's not
18 much they can do for Aubrey Hawkins. He's taken to the
19 hospital. For all practical purposes he's dead right there
20 in the back of that parking lot. Crime Scene comes and
21 meticulously goes over that. They gather all kinds of
22 bullet fragments from Aubrey Hawkins' car, from various
23 portions of the back loading dock area. They collect that
24 because they know they can submit that to a crime lab and a
25 firearms expert can look at that and tell how many different

1 weapons are used. And if weapons are found, he may be able
2 to match those up, if there are sufficient toolmarks. They
3 gather up that evidence and save it in case they are able to
4 locate those murder weapons.

5 There's a nationwide hunt for these
6 individuals. They eventually make their way to Colorado.
7 On the way they now have an RV, a recreational vehicle, that
8 they stay in and they also purchase a van and a Jeep. They
9 make their way to Woodland Park, Colorado, which is a small
10 town about 18 miles northwest of Colorado Springs. They
11 stay in an RV park. They arrive there on New Years Eve.

12 There are under the guise that they -- the
13 tale they are telling is that they are Christian
14 missionaries. They stay to themselves, except for one,
15 Larry Harper, who attends a Bible meeting there in the park.
16 They stay there through the month of January.

17 You will hear from a woman who also lived in
18 that RV park. Her name is a Jeanie Bartholomew. She went
19 to those Bible studies. She also watched the show,
20 "America's Most Wanted." She had followed this crime story
21 that occurred out of the shooting in Irving. She had seen
22 photographs of the suspects. The first time she saw Larry
23 Harper at that Bible study, she thought he looked familiar,
24 thought he looked like one of those individuals, but she
25 thought he couldn't possibly be the one involved in that

1 story.

2 Three weeks later on January 21st, a Sunday,
3 he went to church with them. After the services he asked
4 them if he could take them to lunch, her and another friend.
5 They agreed to do that. They drove back to the RV park and
6 he said that he had to check in with his brothers. They
7 drove to the campsite and at that time Ms. Bartholomew was
8 introduced to George Rivas, who was going by the name of
9 Brother Luke and Michael Rodriguez. She had just seen
10 another episode of the "America's Most Wanted" the night
11 before. When she saw George Rivas, she instantly knew who
12 he was, that he was the George Rivas involved in that crime.
13 She then recognized Michael Rodriguez, and then she realized
14 that Larry Harper was, indeed, the individual that she first
15 thought he was.

16 She was able to keep her composure, went to
17 lunch and as soon as they dropped him off, went to the
18 manager of the RV park and they went -- eventually went to
19 the Sheriff of Teller County.

20 Sheriff Fehn called in the El Paso deputies,
21 the adjoining county. They called in the FBI. And they
22 came up with a plan. The next morning they would try to
23 catch these individuals separately. They had their law
24 enforcement teams divided up.

25 Around 10:00 that morning three individuals

1 leave in a Jeep, George Rivas, Michael Rodriguez, and Joseph
2 Garcia. As they were going down the highway, they pull into
3 a gas station and a SWAT team takes them down. They are
4 arrested without incident. Thirteen weapons, including
5 Aubrey Hawkins' handgun, are taken into custody at that
6 time.

7 After they are taken into custody, Sheriff
8 Fehn moves in with the FBI SWAT team and they surround the
9 RV. They make demands for those individuals to come out and
10 after forty-five minutes the defendant, Randy Halprin,
11 emerges and surrenders. The other individual in that RV at
12 the time is Larry Harper who does not come out and
13 eventually takes his own life. His body is recovered later.

14 You would learn from the search of the RV that
15 there were numerous weapons taken from the Oshman's and
16 property taken found in the RV. The other two individuals,
17 Donald Newbury and Patrick Murphy, were not at the RV and
18 were captured two days later in Colorado Springs in a hotel
19 room where the rest of the weapons were recovered.

20 You will learn that in the search of the RV
21 underneath, officers found a large bag taped up and inside
22 that were the .357 revolvers disassembled. They took those
23 back to Texas. A firearms expert was able to assembled
24 those again and test fire them. He will come in and tell
25 you in this courtroom that by a minimum five different

1 weapons, five different revolvers were used or fired
2 projectiles that were recovered from the crime scene, either
3 from Aubrey Hawkins' body, from his car, or projectiles
4 found there in the parking lot itself.

5 At the close of the evidence, the State of
6 Texas will have proven its case beyond all doubt that Randy
7 Halprin is guilty of capital murder. Thank you.

8 MR. ASHFORD: May it please the Court?

9 THE COURT: You may.

10 MR. ASHFORD: Good morning, ladies and
11 gentlemen. Once again, I'm George Ashford. I'm the lead
12 attorney representing Mr. Halprin, along with Ed King.

13 We believe the evidence will show you that at
14 18 years old Randy Halprin was charged with the offense of
15 injury to a child. By far the most serious thing he had
16 ever been accused of in his young life. He went to jail in
17 Tarrant County, never bonded out of jail. The next year at
18 age 19, he pled guilty, went to the Connally Unit of the
19 Texas Department of Corrections.

20 You will learn the Connally Unit is a pretty
21 serious unit. By classification of crimes committed, the
22 inmates that are sent there have had some fairly serious
23 cases. Not the kind of place that you want to go, 19 years
24 old, and never been to prison before.

25 You will learn that consistent with his

1 character, consistent with his personality, he stayed pretty
2 much to himself. Didn't get in any trouble. Didn't join
3 any gangs. But you will learn that in order to help him get
4 through the system, in order to help him learn how to
5 survive in such a tough place, he had kind of a mentor, kind
6 of a big brother, and that individual was George Rivas.

7 You are going to learn that George Rivas was
8 very bright, very charismatic individual. You are going to
9 learn that most of what Mr. Shook told you about the State
10 is going to try to prove to you was planned, executed,
11 individuals were handpicked by George Rivas.

12 You are going to learn that after being in
13 prison, in jail, for five years, Mr. Halprin had no visits
14 and very little correspondence. And when presented with the
15 opportunity to leave prison and start a new life, start
16 over, by Mr. George Rivas, naively he went along with this.

17 He did end up in Dallas. He did end up inside
18 that Oshman's. You are going to learn that naively they are
19 going to take the money from the Oshman's. They were also
20 going to take guns because guns are easily sold, same as
21 cash. They were going to be converted to cash. Everybody
22 was going to split up, go their separate ways, and naively
23 Randy Halprin was going to end up in Seattle under a new
24 name, with a new life, and never get in trouble anymore.

25 You are going to learn that, yes, everybody

1 had a role to play in the Oshman's robbery. But consistent
2 with his character, consistent with his personality, he had
3 the goffer role. Get this. Gather that. His role was to
4 gather clothing from the outdoor section that would be used
5 to go to Colorado.

6 You are going to learn that during the course
7 of the robbery, Rivas, Rodriguez, they had the roles that
8 dealt with brandishing weapons. They had the roles that
9 dealt with being in front of people and confronting people.
10 Mr. Halprin's role was to gather property. You are going to
11 learn that Mr. Halprin carried a weapon into the Oshman's
12 because he was told by the others that they would not go
13 unless he did. And that weapon went into his pocket and
14 remained there the entire time.

15 You are going to learn that, yes, there was
16 planning to this particular Oshman's robbery, but more so
17 planning as to this particular location in this particular
18 time because the over-all scheme and how it was to be done
19 had been done before. It had been done several times by Mr.
20 Rivas. Many times. That's what he had been to prison for
21 and he had also done it prior to the Oshman's robbery, but
22 after the escape. And you are going to learn in those
23 robberies nobody ever got shot. Nobody ever got killed.

24 Part of the planning was minimizing the amount
25 of people that had to be involved, entering the store at

1 closing time when there would be no customers there. Part
2 of the planning was having someone to watch out for the
3 police, so a getaway could be made, so there would be no
4 confrontations. Part of the planning was going outside to
5 make sure and ask any employees, is there anybody coming to
6 pick you up, so there would be no confrontations, so there
7 would be no surprises. Part of the planning was creating
8 diversions, so there could be a smooth getaway. All this
9 planning by George Rivas and he had been successful with it
10 before.

11 You are going to learn that because of that
12 planning, Mr. Halprin and the others did not anticipate that
13 anybody would be killed. You are going to learn that the
14 killing of Officer Hawkins was probably the only thing that
15 was not planned.

16 You are going to learn that going to Colorado,
17 the plan was to stay there a few days, get IDs, naively go
18 their separate ways, Mr. Halprin to Seattle to start a new
19 life. And you are going to learn that as these other
20 individuals went out into the community, interfaced with
21 people, consistent with his character and personality, Mr.
22 Halprin stayed isolated in that trailer, avoiding any kind
23 of confrontation, avoiding any type of potential danger.

24 When the police came, he was there where he
25 had been the entire time and surrendered without incident.

1 The evidence is going to show you that Mr. Halprin
2 participated in an aggravated robbery, but did not
3 participate in the capital murder, in the death of Officer
4 Hawkins.

5 THE COURT: Counsel, please approach.

6 (Bench conference)

7 MR. SHOOK: We'll call Jayne Hawkins.

8 JAYNE HAWKINS,

9 having been duly sworn, was examined and testified as
10 follows:

11 DIRECT EXAMINATION

12 BY MR. SHOOK:

13 Q. Would you tell us your name, please.

14 A. Jayne Hawkins.

15 Q. Are you the mother of Aubrey Hawkins?

16 A. Yes.

17 Q. How old was Aubrey at the time of his murder?

18 A. Twenty-nine.

19 Q. And where was he born and raised?

20 A. He was born in Dallas and reared here, too.

21 Q. Did he have a family?

22 A. Yes, his little boy and a wife.

23 Q. What's his name?

24 A. Andrew Hawkins.

25 Q. At the time of Aubrey's murder, how old was

1 Andrew?

2 A. Andrew was nine.

3 Q. And his wife was Lori Hawkins?

4 A. Yes.

5 Q. Is that Andrew's natural mother?

6 A. No.

7 Q. Had Aubrey been --

8 A. Married before.

9 Q. Okay. And how was your son employed?

10 A. Aubrey was a police officer with the Irving
11 Department.

12 Q. And about how long had he been with the Irving
13 Department?

14 A. I think about 16, 18 months, something like
15 that.

16 Q. Did he enjoy being a police officer?

17 A. Oh, yes. It was absolutely his life's dream
18 to become a police officer with a big department.

19 Q. Had he been a police officer at other
20 departments?

21 A. Yes. He was at Saint Paul and he was at -- I
22 think he was the head of the Police Department at Harris
23 Medical and then he was with the Kaufman Department as well.

24 Q. And was his plan and part of his goal to join
25 a larger police force?

1 A. Yes, yes. He wanted to be with a big
2 department and he did it.

3 Q. Now, let me turn your attention to Christmas
4 Eve of 2000. Had you made some plans with your son?

5 A. (Witness nods head.)

6 Q. What were those?

7 A. Well, I had told Aubrey that -- I'm just tired
8 of doing this -- that my mother was coming and so he said
9 knowing, of course, we were coming from DFW and he would be
10 working in Irving, he said, could we have Christmas Eve
11 dinner because we were going to spend Christmas day at his
12 house. And he wanted to see my mom. And so I said, oh,
13 that would be great, because, you know, normally I didn't
14 get to see Aubrey when he was working.

15 And so we -- my mom and I came from the
16 airport to meet Aubrey, but mother's plane was late, so we
17 were a little bit late and Lori had chosen Olive Garden.
18 And so --

19 Q. Is that the Olive Garden located right there
20 on Highway 183?

21 A. Yes. So when we walked in, Andrew and Aubrey
22 was sitting there and Lori was sitting there waiting on us
23 and --

24 Q. How old was your mother at that time?

25 A. Ninety-two.

1 Q. After y'all arrived, did you sit down at the
2 table and have Christmas Eve dinner?

3 A. Yes.

4 Q. How was your son dressed?

5 A. Aubrey had his uniform on. It was only the
6 second time I had ever seen him in it.

7 Q. And was he in good spirits at that time?

8 A. Very good spirits. He had just had a health
9 checkup and he said, "Mom, my triglycerides are down", and
10 he was, uh-huh, happy, and looked very well, you know.

11 Q. At some point in time did your son have to
12 leave?

13 A. Yes, he did. We ate -- I knew we didn't have
14 much time because we were late. And so his radio kept
15 calling and he looked across the table at me and he said,
16 "Mom, I'm going to have to go." So we, you know, finished
17 quickly and got the check and stood up and walked to the
18 parking lot. And Aubrey scooped up Andrew, you know, I love
19 you. He never left me or Andrew or got off the phone
20 without saying I love you, ever. And he said -- he hugged
21 Andrew and said, you know, "I love you. See you in the
22 morning." And, "Bye, Daddy" and same with Lori. He put
23 them in the car and they went away.

24 And then we got my mom in the car and Aubrey
25 said, "I want to show you how to get back on the freeway."

1 He always sort of took care of things that way. So I was in
2 the car with my mom and we were behind him and he pulled out
3 of the parking lot and turned right onto 183 service road
4 and we followed him and he turned left on the Esters
5 overpass and left onto the service road, going back toward
6 Dallas. And I followed him and then I got on the freeway
7 and we were parallel for a while and he waved like this in
8 his rearview mirror and I sped ahead.

9 And then Oshman's, you know, was just right
10 down the street.

11 Q. Let me show you a photograph which has been
12 marked as State Exhibit 8. Is that -- does that show kind
13 of an overview of the Olive Garden Restaurant that was off
14 183?

15 A. Yes.

16 Q. Is that the Oshman's located there --

17 A. Yes.

18 Q. -- in the upper corner?

19 A. Yes.

20 MR. SHOOK: Your Honor, at this time
21 we'll offer State Exhibit 8.

22 MR. ASHFORD: No objections.

23 THE COURT: No. 8 shall be admitted.

24 Q. (By Mr. Shook) Ms. Hawkins, I want to turn
25 your attention to the monitor. We'll go over what we just

1 did with ourselves at the witness stand in regards to this
2 photograph. The Olive Garden, is that located right there?

3 A. Yes.

4 Q. Is this Highway 183?

5 A. Yes.

6 Q. And then this area up here, is this where the
7 Oshman's is located?

8 A. Yes.

9 Q. You last saw your son driving down this
10 service road?

11 A. Yes.

12 Q. Okay. Now, later that evening did you go back
13 to your home?

14 A. Actually, I went to Eatsi's to get creme
15 brulee for Andrew. I asked him what he wanted for dessert
16 and that's what he wanted. And we were there. And my mom
17 and I -- first of all, you know, Aubrey said, "I love you,
18 Mom," is the last thing he said. And anyway so --

19 Q. Let me turn your attention to when you were
20 home that evening. Did someone come to your home?

21 A. We went -- mother and I went home and we
22 opened our gifts that we had given each other because I had
23 so much to take to Aubrey's. And so mother and I opened our
24 gifts and put our gowns on. We were getting ready for bed
25 and it was after 9:00 or so. And I gathered up all the

1 presents and put them in shopping bags and put them by my
2 front door.

3 And then the doorman called upstairs and he
4 said, "There's some nut down here." He said, "Somebody
5 flashing a badge and some woman named Rose." And I said, "I
6 don't want to let somebody up here like that," because I had
7 no idea. I did not think about it at all who that would be.
8 And as it turned out, Rose was Chief Canaday's wife, who I
9 had never met.

10 Q. Chief Canaday, was he the Irving Police Chief?

11 A. Yes. And the badge, of course, we know what
12 it was. So they really banged on the door, didn't ring the
13 doorbell, just banged and banged. And I went to the door
14 and looked through the peephole and I could see four people
15 standing there, two, I think, in uniform and then like a, I
16 think a chaplain, and so I knew.

17 Q. You knew at that time?

18 A. And I just said, "Has something happened to
19 Aubrey?" And they yelled at me and said, "Well, if you will
20 let us in, we'll tell you." And I opened --

21 Q. Did they come in at that time?

22 A. I'm sorry?

23 Q. Did they come into your home at that time?

24 A. Uh-huh. And I don't know what they said. I
25 don't remember what they said.

1 Q. I want to show you what has been marked as
2 State Exhibit 6. Is this a photograph of your son in his
3 police officer's uniform?

4 A. Yes.

5 Q. Is this also a photograph, State Exhibit 7,
6 your son with his boy?

7 A. Uh-huh.

8 Q. Okay.

9 MR. SHOOK: Your Honor, at this time we
10 offer State Exhibit 6 and 7.

11 MR. ASHFORD: No objections.

12 THE COURT: Nos. 6 and 7 shall be
13 admitted.

14 Q. (By Mr. Shook) This is Aubrey and --

15 A. Aubrey and Andrew, uh-huh, at my house. I
16 took it.

17 MR. SHOOK: Judge, that's all the
18 questions we have.

19 MR. ASHFORD: No questions of this
20 witness, Your Honor.

21 THE COURT: Thank you, ma'am. You may
22 stand down.

23 MR. SHOOK: May this witness be excused?

24 MR. ASHFORD: No objections, Your Honor.

25 THE COURT: She may. Members of the

1 jury, we need to take a break at this time. If you will, go
2 with the Sheriff.

3 (Jury out)

4 [Recess]

5 (Jury in)

6 THE COURT: Thank you. You may be
7 seated. Mr. Shook?

8 MR. SHOOK: Call Wes Ferris.

9 THE COURT: Let the record reflect this
10 witness has been previously sworn.

11 WESLEY FERRIS,
12 having been duly sworn, was examined and testified as
13 follows:

14 DIRECT EXAMINATION

15 BY MR. SHOOK:

16 Q. Would you tell us your name, please.

17 A. Wesley Ferris.

18 Q. And how are you employed, sir?

19 A. I'm currently employed by Dodson's Grand
20 Rental Station in Burleson, Texas.

21 Q. Do you have a family?

22 A. Yes, sir, I do. A wife, six children, three
23 grandchildren.

24 Q. Prior to your current job, did you work for
25 the Oshman's Corporation?

1 A. Yes, sir. I was a department manager at the
2 Oshman's Supersports Store in Irving, Texas.

3 Q. And prior to that, how were you employed?

4 A. I was in the United States Marine Corp for 20
5 years.

6 Q. What was your rank in the Marine Corp?

7 A. I retired as a gunnery Sergeant, E-7.

8 Q. When did you first begin working for Oshman's?

9 A. About a year after I retired from the Marine
10 Corp.

11 Q. And you work there at the Oshman's Super Store
12 located in Irving, Texas?

13 A. Yes, sir, I did.

14 Q. Is that right off Highway 183?

15 A. Yes, sir, it is.

16 Q. What were your duties there at the store?

17 A. I was -- my primary duty was department
18 manager for the field and stream department in charge of all
19 the hunting and fishing and camping areas.

20 Q. As a manager did you have other duties, other
21 than the specific section you were assigned to?

22 A. Yes, sir. I was to help anywhere else in the
23 store that I was needed.

24 Q. Let me turn your attention now to December 24,
25 2000, and ask if you were working that day?

1 A. Yes, sir, I was.

2 Q. About what time did you come to work?

3 A. I got to work about 6:30 that morning.

4 Q. What were your hours going to be on Christmas
5 Eve?

6 A. We were going to open from 7:00 until 6:00
7 p.m.

8 Q. And about how many employees did you have
9 working that day?

10 A. We had 22 scheduled to work throughout the
11 day.

12 Q. At closing time at 6:00 -- let me ask you
13 this. What time were you scheduled to get off that day?

14 A. I was scheduled to leave around 5:30.

15 Q. Did you stay later than that?

16 A. I stayed later because I wanted to help and
17 get the registers closed down and get the employees out of
18 there for the holidays.

19 Q. At closing time how many employees did you
20 have there?

21 A. I believe there was myself, three other
22 managers, and, I believe, 11 or 12 associates.

23 Q. Okay. Let me show you an exhibit which has
24 been marked as State Exhibit 755. Is this a list of the
25 managers on duty at that time, as well as the sales

1 associates?

2 A. Yes, sir, it is.

3 MR. SHOOK: Your Honor, at this time we
4 offer State Exhibit 755.

5 MR. ASHFORD: No objections, Your Honor.

6 THE COURT: No. 755 shall be admitted.

7 Q. (By Mr. Shook) Mr. Ferris, the list that we
8 have here at the top, we have your name at the very top,
9 along with three others as the managers; is that right?

10 A. Yes, sir.

11 Q. Was there one manager that had -- was in
12 charge of the store over the other managers?

13 A. Yes, sir. That would be Darrin Ojeda.

14 Q. But you-all would help each other out with
15 each other's duties?

16 A. Yes, sir.

17 Q. Okay. And then the sales associates, are
18 these the names here listed of everyone that was working
19 until 6:00 p.m. that day?

20 A. Yes. Those were the ones that were still in
21 the store.

22 Q. And what's the average age of most of these
23 people?

24 A. At that time most of those were 18, 17, 18
25 years of age.

1 Q. Are they full-time employees? Part-time?

2 A. The majority of them were part-time, high
3 school students.

4 Q. Most of them high school students?

5 A. Yes, sir.

6 Q. All right. And where did they work throughout
7 the store?

8 A. In the various departments, cash registers,
9 shoe department, a couple worked back in the hunting
10 department, athletic department, throughout the store.

11 Q. What was the store like that day? Was there a
12 lot of customers?

13 A. There were a lot of customers, but not as much
14 as we had been planning. That's why we had sent several
15 associates home early during the day.

16 Q. Let me -- and let me ask you to describe that
17 store. What, is this a large store? Smaller store?

18 A. It's about the third or fourth largest store
19 in the area that we had.

20 Q. Okay. About 5:30 p.m. that day, did one of
21 the managers make an announcement?

22 A. Yes, sir. Darrin made an announcement that it
23 was 5:30 and we would be closing the store at 6:00 and asked
24 all the customers to make their final selections and proceed
25 to the front of the store to the cash register.

1 Q. Do you have a PA system that these
2 announcements can be made on?

3 A. Yes, sir.

4 Q. Okay. Let me show you what has been marked as
5 State Exhibit 43. Does this show kind of a blueprint or
6 diagram of how the store was laid out back at that time?

7 A. Yes, sir, it does.

8 Q. And would it help you explain your testimony
9 to the jury?

10 A. Yes, sir, it would.

11 MR. SHOOK: Your Honor, at this time we
12 offer State Exhibit 43 for all purposes.

13 THE COURT: State 43 --

14 MR. ASHFORD: No objections.

15 THE COURT: -- shall be admitted.

16 MR. SHOOK: May I have the witness step
17 down for a moment?

18 THE COURT: You may.

19 Q. (By Mr. Shook) Mr. Ferris, I'll ask you,
20 when we're pointing things out, be wary that there are some
21 jurors that may not be able to see over your shoulder.

22 Does this show a diagram of how the Oshman's
23 is laid out?

24 A. Yes, sir, it did at that time.

25 Q. Let's start at the top. Where would the

1 entrance be?

2 A. The entrance is right here, two doors, one
3 outside the building, and one over here.

4 Q. Okay. Now, do you have windows that you can
5 look in through the store at the front?

6 A. Only at this area right here.

7 Q. So the only way a person can see into the
8 store would be in the front doors?

9 A. Yes, sir.

10 Q. And as you come through the entrance, where
11 are the cash registers located?

12 A. Cash registers are located here. Come in the
13 entrance and take a left. There are three registers here,
14 and customer service back here with two cash registers.

15 Q. What goes on at customer service?

16 A. Customer service is where the customer comes
17 in, they have merchandise they want to return, not a proper
18 fit, take it there and get the returns on it.

19 Q. Is that where the PA system is located?

20 A. The PA system is located right next to this
21 counter.

22 Q. Are there some offices located here just down
23 from the service center?

24 A. Yes, sir. There's the general manager's
25 office, assistant general manager's office, video room, and

1 the cash office area back here.

2 Q. Tell the jury what the video room is.

3 A. The video room is where we kept all our
4 surveillance cameras that were recording devices for the
5 cameras that were located throughout the store.

6 Q. Okay. Now, you have had cameras throughout
7 the store; is that right?

8 A. Yes, sir.

9 Q. On that particular day how many cameras were
10 actually operating?

11 A. They were all operating, but they were only
12 recording on the one here on the entrance and exit to the
13 store.

14 Q. So the only recordings were made were a person
15 entering and leaving the store?

16 A. Yes, sir.

17 Q. Okay. Then the safe, is that located back
18 near the store safe?

19 A. Yes, sir, it is.

20 Q. Now, as you come in and we look, as we're
21 looking at the diagram to the left, what is this area right
22 here?

23 A. This is the shoe department where we had all
24 our shoes that we had in the store there for the customers
25 to look at and pick out the ones to best fit them and then

1 we move around back here to the exercise mat where we had
2 displays of all the treadmills and exercise machines that we
3 carry in the store.

4 Q. Okay.

5 A. These shelves here is where we -- these are
6 shelves that we display different merchandise on. For
7 example, this one had athletic bags on baseball, softball,
8 basketball, volleyball.

9 Q. What are these areas of items here?

10 A. These areas in the center are apparel
11 departments. We had at the time women's department,
12 children's department, and men's department.

13 Q. Okay. And then this area here which is titled
14 "field and stream"?

15 A. That was my department, field and stream
16 department, the fishing department. This is all fishing.
17 The hunting department was back in here where the guns were
18 kept. And this is all camping and water sports there.

19 Q. Now, in this section of the store did you sell
20 handguns?

21 A. Yes, sir, we did.

22 Q. What type of handguns?

23 A. Semiautomatic and revolver handguns.

24 Q. Where were they displayed?

25 A. They were displayed in these cases. These are

1 display cases. They were displayed in these cases.

2 Q. When the store closed, did the guns stay there
3 in the display cases?

4 A. No, sir. We took them out and locked them up
5 in a safe back here.

6 Q. And then you also sell rifles and shotguns?

7 A. Yes, we did.

8 Q. Where were those kept?

9 A. Those were kept in a rack on the wall behind
10 the counter.

11 Q. Okay. And did you have various types of
12 ammunition for all those types of weapons?

13 A. Yes, sir, we did. It was on the shelves
14 immediately below the rifle right here behind the counter.

15 Q. Okay. And, now, what do we have back here in
16 this area towards the rear of the store?

17 A. Right in this area right here was the bicycle
18 department. This was the golf and tennis department. Back
19 through here went back to the restrooms and the employee
20 breakroom.

21 Q. Where is the employee breakroom located?

22 A. Employee breakroom is down here.

23 Q. Finally, what is this area here?

24 A. That was the warehouse area where we received
25 all our merchandise in and shipped out merchandise.

1 Q. Okay. Now, the area behind the store where
2 you would receive merchandise, there was a loading dock
3 area; is that right?

4 A. Yes, sir, that's right here.

5 Q. And the exit doors which would lead to that
6 loading dock area, where are they located?

7 A. There was one here, here, and one right here,
8 and there were two bay doors right here where the trucks
9 backed up to.

10 Q. So the -- some 17 or so employees, the sales
11 associates, they were assigned to different areas of the
12 store?

13 A. Yes, sir.

14 Q. And the managers had a different section,
15 also?

16 A. Yes, sir.

17 Q. Now, you said around 5:30 p.m., I believe, it
18 was Darrin Ojeda made the announcement that the store would
19 be closing soon?

20 A. Yes, sir, he did.

21 Q. And what did you do at that time?

22 A. When he made that announcement, we were both
23 standing up here by customer service and I told him that I
24 was going to walk the store and see how many customers were
25 in it. And I proceeded this way and walked around,

1 basically around this track, and getting an idea as to how
2 many customers were still in the store, see if anybody
3 needed any help.

4 Q. Were there a lot of customers in the store?

5 A. There were not a lot of customers in the
6 store.

7 Q. Did you go to your particular area, the field
8 and stream section?

9 A. Yes, sir. I got back to the field and stream
10 area back there and two associates back there. I told them
11 to go ahead and put the guns away because there was nobody
12 back there. And while they put the guns away, I closed down
13 the cash register back here, counted the money down in that
14 register.

15 Q. And after you counted the money, what did you
16 do?

17 A. I picked up -- I told them after they put the
18 guns away and I counted the money, I told them to get a good
19 recovery on the area and I took the money with the intention
20 of putting it in the safe.

21 Q. Did you ever put it in the safe?

22 A. No, sir, I did not.

23 Q. Where did you put it at that time?

24 A. When I got back about here, I received a page
25 that I was needed back over by the exercise mat. So I took

1 the money and put it in a bin behind customer service that
2 we had there.

3 Q. When you say "a page," is that over the PA
4 system?

5 A. Yes, sir.

6 Q. Okay. You may take your seat. I want to show
7 you some photographs that you have seen outside the presence
8 of the jury. They have been marked State Exhibits 9 through
9 50. Do they show aerial views of the Oshman's store, also
10 interior views of the Oshman's store, as well as a
11 photograph of your vehicle?

12 A. Yes, sir, they do.

13 MR. SHOOK: Your Honor, at this time we
14 offer State Exhibit 9 through 50.

15 MR. ASHFORD: No objections.

16 THE COURT: Nos. 9 through 50 shall be
17 admitted.

18 Q. (By Mr. Shook) First of all, looking at the
19 photograph that is on the monitor now, that shows Highway
20 183, I believe, the other side of the highway; is that
21 correct? The Oshman's store is located up here?

22 A. Yes, sir, it is.

23 Q. Okay. Let me show you State Exhibit 9. Is
24 this another angle that shows the parking lot of the
25 Oshman's store?

1 A. Yes, sir, it does.

2 Q. And the store is located here on the corner;
3 is that right?

4 A. Yes, sir.

5 Q. What's this behind the store?

6 A. It's just an open field back there, sir.

7 Q. And these buildings behind the open field?

8 A. I believe there is some apartment complexes
9 back there.

10 Q. Okay. Let me show you State Exhibit 10. Is
11 that a closer view of the Oshman's?

12 A. Yes, sir, it is.

13 Q. What are these other stores located in this
14 shopping area?

15 A. The one immediately where you have the dot
16 there is Staples and Comp USA is down here at the end and
17 Party City was there in the middle.

18 Q. What about the other group of buildings?

19 A. Over there the first one is Hobby Lobby and
20 the one next to that is K-Mart.

21 Q. And State Exhibit No. 11 shows the front door
22 of the Oshman's? Is that the front door area?

23 A. Yes, sir, it is.

24 Q. Give you a little bit of a closeup on that.
25 There's no windows along the Oshman's building?

1 A. No, sir, there's not.

2 Q. Okay. Now, what type of vehicle were you
3 driving at that time?

4 A. A 1996 Ford Explorer.

5 Q. And where did you park it that day?

6 A. When I first came to work that morning, I
7 parked in about the third row out, just to the right back
8 over in that area.

9 Q. All right. And around 6:00 p.m. where was it
10 parked?

11 A. It was parked over by the light standard right
12 there.

13 Q. This one here?

14 A. Yes, sir.

15 Q. Okay. Now, let me show you State Exhibit 12.
16 Does this show the back loading dock area of the Oshman's?

17 A. Up in the top, right corner, yes, sir.

18 Q. And you talked about the exit doors. Are
19 those located here and here?

20 A. That's one in the corner and one by the truck
21 right there and one down to the left behind the other truck,
22 the trailer.

23 Q. And this trailer here, is that there all the
24 time?

25 A. No, sir, they are not.

1 Q. But this trailer was parked there in this
2 position that evening?

3 A. Yes, sir.

4 Q. And these other two trailers, were they also
5 parked in that position?

6 A. Yes, sir.

7 Q. This parking lot here, what type of parking
8 lot is that?

9 A. That was for the car dealership.

10 Q. Now, you said that you had gone to the field
11 and stream section. You had taken the money from that cash
12 register. You were about to put that up in the safe when
13 you were given a page to go to the exercise mat area?

14 A. Yes, sir.

15 Q. Is that right?

16 A. Yes, sir.

17 Q. Let me show you State Exhibit 13. That the
18 exercise mat area?

19 A. Yes. The exercise mat is just to the right of
20 those boxes right there.

21 Q. Right in there? When you came to that area,
22 who was there?

23 A. Tim Moore was there talking to an individual
24 dressed wearing a -- pretty well dressed, wearing dark
25 pants, windbreaker-type jacket, had a ballcap on that said

1 ADT on it.

2 Q. Okay. And Tim Moore, is he another one of the
3 managers?

4 A He was the department manager for the athletic
5 department.

6 Q. And did this person that was dressed in the --
7 what is ADT?

8 A. It's a security system that provide -- at the
9 time they provided the alarm system for the store.

10 Q. Okay. So you were familiar with them?

11 A. Yes, sir.

12 Q. All right. Did it appear to you he was
13 dressed in some type of security guard uniform?

14 A. Yes, sir, it did.

15 Q. And did he have a weapon?

16 A. I did not see a weapon.

17 Q. Okay. Once you were introduced to him, what
18 did he want with you at that time?

19 A. He told me that him and his partner were
20 investigating a grab-and-run ring that had been operating in
21 the area.

22 Q. Tell the jury what a grab-and-run gang is.

23 A. A grab-and-run gang is a group of individuals
24 that come into a store and they grab merchandise and will
25 run out any number of the exits without paying for the

1 merchandise.

2 Q. Now, at a later time you were able to identify
3 this man who was talking to you; is that correct?

4 A. Yes, sir, I was.

5 Q. Looking -- let me show you an exhibit which
6 has been marked State Exhibit 44 to your right. Do you
7 recognize this exhibit?

8 A. Yes, sir.

9 Q. Does this exhibit have photos of some of the
10 men or the men that you identified involved in the robbery
11 that night?

12 A. Yes, sir, it does.

13 MR. SHOOK: Your Honor, at this time we
14 will offer State Exhibit 44.

15 MR. ASHFORD: No objections, Your Honor.

16 THE COURT: No. 44 shall be admitted.

17 Q. (By Mr. Shook) Looking at State Exhibit 44,
18 which of the individuals was there in the security guard
19 uniform?

20 A. George Rivas.

21 Q. Up here in the left-hand corner?

22 A. Yes.

23 Q. Did he look like this when you were talking to
24 him back on Christmas Eve 2000?

25 A. No, sir, he did not.

1 Q. How did he look different?

2 A. He had no facial hair. His hair was black and
3 he wore wire rim glasses.

4 Q. And he talked to you about this grab-and-run
5 gang; is that right?

6 A. Yes, sir.

7 Q. What else did he say to you at that time?

8 A. He had a sheet of paper that had -- 8-by-10
9 sheet of paper and it had six photographs on it. And he
10 asked if I could have the employees look at these
11 photographs to see if they recognized any of those people
12 being in the store earlier in the day.

13 Q. Did you bring some employees over at that
14 time?

15 A. There were two back in that area, Sandra
16 Rodriguez and Tony Coronado. I called them over to have
17 them look at the pictures right there.

18 Q. Did he ask about video cameras, anything like
19 that?

20 A. After Sandra identified two of them as
21 possibly being in the store earlier that day, he asked if we
22 had a video system and I told him we did.

23 Q. So she said -- she identified two as possibly
24 being in the store?

25 A. Yes, sir.

1 Q. And then you told him -- did he want to know
2 if you had captured them on video camera?

3 A. Yes, sir.

4 Q. Where did you take him at that time?

5 A. I took him and Sandra and we went up to the
6 video room. And I got up there and I opened the door and as
7 I went in the room, I looked to see where it was recording.
8 And I told him -- I sat down at the chair and I stopped the
9 machine from recording and I asked Sandra about what time it
10 was she saw these individuals in the store. And she told me
11 and I told him that, well, it was only recording the
12 entrances and exits to the door and he told me it wouldn't
13 do him any good. It was okay.

14 Q. Is this what we're seeing, the video room that
15 you went to?

16 A. Yes, sir.

17 Q. That's located at the front of the store near
18 the -- down from the service counter area in that group of
19 offices; is that right?

20 A. Yes, sir.

21 Q. How was Mr. Rivas acting at that time? How
22 was his demeanor?

23 A. Real calm and not panicky or anything, real
24 calm and quiet.

25 Q. You weren't suspicious of him at all at that

1 time?

2 A. No, sir, I was not.

3 Q. After you saw that it was only recording the
4 entrances and exits, what did you do then?

5 A. We left the room. I closed the door behind me
6 and we went back up to customer service.

7 Q. Did he have any requests of you regarding the
8 other employees looking at his photo lineup?

9 A. He just asked if all the associates could
10 gather and look at the photographs.

11 Q. Where were all the other sales associates at,
12 at that time?

13 A. By the time we got back out to the customer
14 service area, most of them were already up to the front of
15 the store.

16 Q. What area did they gather in?

17 A. They were right around the register areas.

18 Q. Let me show you State Exhibit 15. Does that
19 show the cash registers?

20 A. Yes, sir, it does.

21 Q. Right in this area here?

22 A. Yes.

23 Q. And then the counter here behind that, is that
24 the service area?

25 A. Yes, sir.

1 Q. Okay. Let me show you State Exhibit 16 and
2 17. On the counter there, do we see the actual photo
3 lineup's that Mr. Rivas had?

4 A. Yes, sir.

5 Q. Get a little closer view of that, please.
6 That's the type of black and white photos that he was
7 showing the employees?

8 A. Yes, sir, it is.

9 Q. Did he have someone else in a uniform that was
10 helping him?

11 A. He had somebody else. At that time he did
12 come up to the front of the store. He was up there talking
13 to a couple of the associates.

14 Q. But your dealings up to that time had all been
15 with Mr. Rivas?

16 A. Yes, sir.

17 Q. Had the store closed at that time?

18 A. We had not closed yet. I looked at my watch
19 and it was just after 6:00. I walked over to the phone with
20 the PA system on it and I made an announcement that it was
21 now after 6:00. Oshman's was closed and asked the customers
22 to bring all their final selections up to the front of the
23 store and thanked them for shopping at Oshman's and to have
24 a Merry Christmas.

25 Q. State Exhibit No. 18, does this again show a

1 closer view of the service counter area?

2 A. Yes, sir, it does.

3 Q. And 19, is that a side view?

4 A. Yes, sir, it is.

5 Q. You were behind the service counter area when
6 you made that announcement?

7 A. No, sir, I was right out in front.

8 Q. Right out in front here?

9 A. Right in that area right there.

10 Q. Where was George Rivas?

11 A. He was -- when I made the announcement, he
12 moved back over to this corner down here.

13 Q. Right here?

14 A. Right in that area right there, sir.

15 Q. And after you made that announcement, what
16 happened then?

17 A. I turned around to look and see if there were
18 any customers up there in that area to direct them to a cash
19 register.

20 Q. Did you see some customers?

21 A. I saw several customers in the store and there
22 were a couple up there near that area with baskets.

23 Q. Near the cash register area?

24 A. Yes, sir.

25 Q. Did it look as if they were moving up to make

1 some purchases?

2 A. Yes, sir.

3 Q. What's the next thing that happened?

4 A. Mr. Rivas said -- he was behind me and in this
5 corner and he said, "Listen up. This is a robbery."

6 Q. How did he say that?

7 A. Direct, but not threatening.

8 Q. Okay. Did you turn your attention to him once
9 he said that?

10 A. I turned around and faced him.

11 Q. What was he doing at that time?

12 A. He had a gun, facing it, holding it up in the
13 air.

14 Q. What type of gun was that?

15 A. It was a Smith and Wesson .357 revolver.

16 Q. What is the next thing that he said and did?

17 A. He told me -- he lowered the gun and pointed
18 it at my chest and he said, "Don't try it, Wes. If you do.
19 I would have to shoot you. If I shoot you, I would have to
20 shoot everyone."

21 Q. Was he saying this loud enough for all the
22 employees to hear?

23 A. Yes, sir, he was.

24 Q. Did he have everyone's attention at that time?

25 A. Yes, sir, he did.

1 Q. Did you take his threats seriously?

2 A. Very seriously.

3 Q. What is the next thing he told you at that
4 time?

5 A. He said all the customers were with him and to
6 do what we were told and we would go home for Christmas.

7 Q. Once he said all the customers were with him,
8 did you look out and in the area where you had just seen
9 somewhat you thought at that time were customers coming
10 toward the cash registers?

11 A. Yes, sir, I did. I turned to my left and I
12 looked over and I saw -- I believe -- I thought it was six
13 to eight gentlemen and they were all armed.

14 Q. Okay. Where were they located in the store?

15 A. They were right around that area in a
16 semicircle-type deal around the employees, starting from one
17 end, that end of the customer service down to this.

18 Q. All right. So they were kind of behind the
19 employees?

20 A. Yes, sir.

21 Q. Let me show you the diagram here. If you can
22 point out for the jury the area where you saw the men who
23 you had thought were shoppers?

24 A. All the associates were up against the
25 customer service area and they were back in this area.

1 Q. Kind of in a semicircle?

2 A. Yes, sir.

3 Q. And your memory was you thought maybe six to
4 eight men?

5 A. Yes, sir.

6 Q. Were these the persons that you had seen
7 earlier that you had assumed were customers?

8 A. Yes, sir.

9 Q. And they had guns out?

10 A. Yes, sir, they did.

11 Q. What types of guns did they have?

12 A. I thought at that time with a quick glance
13 some of them had semiautomatics and some of them had
14 revolvers.

15 Q. What were you and the employees directed to do
16 at that time?

17 A. We were directed to put our hands on the
18 counter in front of us.

19 Q. Did you do that?

20 A. Yes, sir, we did. And as I did, I had a set
21 of keys from the gun department in my hand with a sensor tag
22 on it and I was right by the sensor machine and it started
23 beeping. And I just tossed it back to show them that it was
24 nothing, I didn't have anything. It wasn't doing anything.

25 Q. Did all the employees gather along that

1 service counter at that time?

2 A. Yes, sir, they did.

3 Q. Was it pretty crowded?

4 A. Yes, sir, it is.

5 Q. What happened once they were gathered and had
6 their hands placed on the service counter?

7 A. Several of the men started going through
8 pockets and taking personal items, wallets, Leatherman
9 tools, anything they considered might be used as a weapon, I
10 guess.

11 Q. Was George Rivas continuing to tell you things
12 and issue orders?

13 A. He was just standing right there, telling
14 everybody just to do as they were told and they wouldn't be
15 hurt.

16 Q. Did he say anything about any individuals
17 being outside of the store?

18 A. He told me that there were others outside the
19 store, watching.

20 Q. Okay. Did he seem to be able to communicate
21 with someone outside?

22 A. He had a little walkie-talkie type radio on
23 with a microphone in his ear, an ear button microphone, and
24 he talked to somebody, asked how it looked outside.
25 Somebody responded and said that the police were tied up

1 with an accident on 183.

2 Q. Did you believe at that time, then, there was
3 actually someone outside watching the store?

4 A. Yes, sir, I did.

5 Q. What's the next thing that happened at that
6 front counter? Was there -- were all the employees present
7 at that time?

8 A. I believe all but one were present at that
9 time and they brought one of the female employees up shortly
10 thereafter.

11 Q. Do you recall who that was?

12 A. That was Laura Fernandez they brought up.

13 Q. Do you remember who brought her up to the
14 front?

15 A. I don't remember who it was.

16 Q. When she was brought up to the front, what was
17 her condition?

18 A. She had her hands ziptied around her thumbs
19 and she was crying.

20 Q. Once she was brought up, what happened?

21 A. As I said, they were going through our pockets
22 and one of the other gentlemen was just about three or four
23 associates down from me got behind one of the managers, John
24 Lindley. I don't know what John did, but the individual
25 said, "Look, we have a tough boy here. Wants to try

1 something. Go ahead, I want you to try something."

2 Q. How far was John Lindley from you when that
3 was said?

4 A. He was about four associates down from me,
5 four or five feet.

6 Q. So he was pretty close to you?

7 A. Yes, sir.

8 Q. And did you see the man that said that to him?

9 A. I took a step back and looked down that way
10 and, yes, sir, I did.

11 Q. Did that remark concern you?

12 A. Yes, sir, it did.

13 Q. Which one of the men made that remark to John
14 Lindley?

15 A. Joseph Garcia.

16 Q. He's the man located there at the bottom left
17 hand?

18 A. Bottom left, yes, sir.

19 Q. And, again, can you tell the jury the remark
20 he made?

21 A. He said, Looks like we have a tough guy here.
22 "Go ahead, tough guy, try something. I want you to try
23 something."

24 Q. In what manner did he say that?

25 A. He gave me the impression with the tone of

1 voice he had that he was looking for an excuse to hurt
2 somebody and he wouldn't hesitate to hurt somebody.

3 Q. And that concerned you a lot at that time?

4 A. Yes, sir, it did.

5 Q. After all the employees were searched and
6 Laura Fernandez was brought to the front, did George Rivas
7 ask you where all the employees could be placed at that
8 time?

9 A. He asked me if there was a room large enough
10 to put all the employees in. And I started to tell him the
11 general manager's office up there at the front of the store,
12 but I thought different because of the window. And I told
13 him the employee breakroom at the back of the store.

14 Q. And after you told him that, what happened?

15 A. He told everybody to turn to the right, put
16 your hands out in front of you, everybody follow me and I
17 would lead the way back to the breakroom.

18 Q. So you were led in one line with your hands on
19 each other's shoulders?

20 A. Pretty much, yes, sir.

21 Q. Who was leading you?

22 A. George Rivas.

23 Q. Did he have his weapon out at that time?

24 A. Yes, sir, he did.

25 Q. I want to show you a diagram again and just

1 kind of show the jury the path that you took through the
2 store on your way back to the breakroom.

3 A. We started up here at customer service. We
4 came down through here. We got back over here to the golf
5 and tennis department.

6 Q. Once you got to the golf and tennis
7 department, what happened?

8 A. Sandra asked if we could cut the zipties off
9 Laura's thumbs because her thumbs were starting to turn
10 blue.

11 Q. Is Sandra another one of the employees?

12 A. Yes, sir, she was.

13 Q. That's Sandra Rodriguez?

14 A. Yes, sir.

15 Q. Were you allowed to cut the ties off of her
16 thumbs at that time?

17 A. Rivas asked me what we would use to cut them
18 with and I told him there was a pair of wire cutters over on
19 the tennis stringing machine. He went and got them, handed
20 them to Sandra. She started to cut the ties off of Laura's
21 thumbs. I was afraid she would cut Laura's thumbs, so I
22 took the cutters and cut the ties off and handed the cutters
23 back to George Rivas.

24 Q. Was she very nervous?

25 A. She was very nervous.

1 Q. And you are able to take the cutters from her
2 and you cut the ties off?

3 A. Yes, sir.

4 Q. After the ties were cut, was anything else
5 done in that area?

6 A. They took the red shirt from Darrin Ojeda and
7 had one of the other guys put it on.

8 Q. A red Oshman's shirt?

9 A. Yes, sir.

10 Q. Were any of the other individuals with guns,
11 were they near you at that time or was this just George
12 Rivas you were dealing with?

13 A. I know George Rivas was there. I believe
14 there were at least two others.

15 Q. Your attention was on George Rivas at that
16 time?

17 A. Yes, sir.

18 Q. After you cut those ties off and the shirts
19 were taken, where did you go next?

20 A. We went back to the breakroom. As we entered
21 the breakroom, I went in around the Coke machine, was
22 standing there with my back to the Coke machine, and
23 everybody else came in the room.

24 Q. Okay. Once they were in the room, what were
25 they ordered to do?

1 A. Everybody was ordered to get up against the
2 wall and get on the floor.

3 Q. And did they start to comply with those
4 wishes?

5 A. The associates did to the best of their
6 ability, but there were tables and chairs up against the
7 wall and they were trying to move stuff away from the wall
8 so they could get up against the wall and get down.

9 Q. Did you stay in the room or were you taken
10 out?

11 A. George Rivas told me to go with him and we
12 left the room.

13 Q. How long were you in the room before you were
14 taken out?

15 A. About 30 or 40 seconds.

16 Q. Did you leave with George Rivas at that time?

17 A. Yes, I did.

18 Q. Where did he take you?

19 A. He took me back to customer service.

20 Q. Do you know who was left in the back room with
21 the other employees?

22 A. Michael Rodriguez and Joseph Garcia.

23 Q. Okay. You have already identified Joseph
24 Garcia as the man making the previous threat. Was Michael
25 Rodriguez the man with the beard there at the top?

1 A. Yes, sir.

2 Q. Now, did he look like that that particular
3 day?

4 A. No, sir.

5 Q. How did he look?

6 A. He didn't have any facial hair, either. He
7 was clean shaven.

8 Q. He didn't have that beard?

9 A. No, sir.

10 Q. What about Joseph Garcia? Did he look
11 different?

12 A. He looked pretty similar to that.

13 Q. Okay. Now, where did George Rivas first take
14 you once you left the breakroom?

15 A. We started back up to customer service.

16 Q. Once you got to customer service, what did you
17 do?

18 A. Just before we got all the way back up there,
19 he asked me if there was a bag large enough in the store to
20 put all the money in.

21 Q. Did you tell him there was?

22 A. I told him there was and they had them back on
23 the bag wall next to the exercise mat.

24 Q. I'll show you State Exhibit 20. Does that
25 show the area where you retrieved the bag from?

1 A. Yes, sir, it does.

2 Q. We see some bags there on the floor. Was that
3 the area that you took the bag from or --

4 A. He took it off the shelf, a couple of shelves
5 up from there.

6 Q. And these other bags, were they -- usually you
7 don't keep them laying around on the floor, do you?

8 A. No, sir, we do not.

9 Q. Also, State Exhibit 21, do we see some
10 merchandise there, some type of ties there on the display
11 case?

12 A. Yes. These are black straps that we sold at
13 the store used to attach sleeping bags to backpacks and to
14 compression bags.

15 Q. Were those used in the back room at all?

16 A. Some were, yes, sir.

17 Q. What were they used for?

18 A. To tie the associates up.

19 Q. After you retrieved that blue Adidas bag,
20 where did you go then?

21 A. Went back up to customer service.

22 Q. And what happened there?

23 A. We went up to the first register there. He
24 asked me if I opened up the register, would it set off an
25 alarm. I told him no. And he said to open up the register.

1 Q. Did you see anyone else up in that area near
2 the customer service?

3 A. When we -- the first time we started back up
4 there, there was another gentleman up there. He had on one
5 of the red Oshman's shirts. As he saw Wes coming up, he
6 left the area.

7 Q. So at that time it was just you and Mr. Rivas?

8 A. Yes, sir.

9 Q. After you emptied the first register, where
10 did you go then?

11 A. He told me to empty all the registers up there
12 and put all the money in the bag.

13 Q. Did you comply with all his demands?

14 A. I did. And while I was doing that, he asked
15 me for my car keys.

16 Q. Did he tell you why he wanted your car keys?

17 A. I asked him why, was he going to take my
18 vehicle? And he said, "Yes, I'm going to take it, but you
19 will it get back. I will only take it a couple of blocks or
20 so."

21 Q. Did he ask what type of vehicle you had?

22 A. Yes, sir, he did. And asked where it was
23 parked and how to deactivate the alarm.

24 Q. Did you turn over your keys at that time?

25 A. Yes, sir, I did.

1 Q. Does he have his weapon out at this time?

2 A. At that time, no, sir, he did not.

3 Q. Did he stay pretty close to you at all times?

4 A. Yes, sir, he did.

5 Q. After you took the money out of the cash
6 register drawers, where did he have you go then?

7 A. He told me he wanted the videotape.

8 Q. Did you go to the videotape room?

9 A. We walked back to the video room, as I got my
10 key out to unlock the door, he noticed the other door down
11 at the end of the hallway and asked me what was behind that
12 door.

13 Q. State Exhibit 22, does that show the hallway
14 that you were in at that time?

15 A. Yes, sir.

16 Q. And he was asking about these other doors down
17 here?

18 A. The first door there is the door to the
19 general manager's office. The second spot down there is the
20 door to the video room. And the third one is the one he
21 asked me about.

22 Q. Okay. And did you take him to the third door?

23 A. I told him it was just a storeroom for pens
24 and papers and paperclips and he said, "Open the door."

25 Q. So you told him it was just a storeroom and he

1 said, "Open it up"?

2 A. Yes, sir.

3 Q. And when he did, what was inside there?

4 A. When I opened up the door, there was another
5 door leading into the cash office.

6 Q. Did he ask you to open that door, also?

7 A. He told me to open that door and he saw the
8 safe.

9 Q. Let me show you State Exhibit 23. Is that
10 after you open that second door, is that how the safe
11 appears?

12 A. Yes, sir, that's the safe there in the corner.

13 Q. Once he saw the safe, what did he say to you?

14 A. He said, "Nice try, Wes, open the safe."

15 Q. Did you open the safe?

16 A. I opened up the safe and he saw the money in
17 the safe.

18 Q. Now, about how much money did you have in the
19 safe at that time?

20 A. Total in that safe at that time was about
21 \$70,000 in cash.

22 Q. How many days of receipts were there?

23 A. Three days.

24 Q. Did he take all that?

25 A. He took all of that. There was one little box

1 in there that said, "Employee fund" on it and he said,
2 "Don't take that."

3 Q. Did he say why he didn't want you to take
4 that?

5 A. He says, "I'm not stealing from the employees.
6 I'm stealing from Oshman's."

7 Q. What did you say to him?

8 A. "You're taking my truck."

9 Q. What did he tell you?

10 A. He said, "I told you, you were going to get it
11 back."

12 Q. After he took the cash, did he put that in the
13 Adidas bag?

14 A. Put that in the bag and we left the room and
15 he again said he wanted the videotape.

16 Q. Okay. Did you go and retrieve the videotape?

17 A. I opened the door to the video room and he
18 went in and took the tape out of the recorder.

19 Q. After he took the tape, where did you go then?

20 A. Said, "Let's go back to the gun department,"
21 and we started back to the gun department.

22 Q. Let me show you State Exhibit No. 24. Does
23 that show the area of the store where you first come out and
24 down the aisle that leads to the gun department?

25 A. Yes, sir, it does.

1 Q. And State Exhibit 25, is that a closer view of
2 the gun department?

3 A. Yes, sir, it is.

4 Q. These are the shotguns and rifles here in the
5 back behind the counter?

6 A. Yes, sir.

7 Q. Once you got to the gun department, what
8 happened?

9 A. As we approached the gun department, it was a
10 gentleman back there. He told Mr. Rivas that the handguns
11 were gone.

12 Q. Is this another one of the robbers?

13 A. Yes, sir.

14 Q. And where was he located when he told Mr.
15 Rivas that?

16 A. He was behind the counter, standing right in
17 front of the rifles and shotguns.

18 Q. Let me show you the next photograph. Is that
19 a closer view of the counter, showing the area where he was
20 standing?

21 A. Yes, sir.

22 Q. And did you later recognize him or identify
23 him from some photographs?

24 A. Yes, sir, I did.

25 Q. Who was that?

1 A. That was Donald Newbury.

2 Q. That's the man at the top there with the kind
3 of goatee?

4 A. Yes, sir.

5 Q. Was he wearing the goatee that day?

6 A. No, sir, he was not.

7 Q. What did he tell George Rivas at that time?

8 A. He told him the handguns were missing.

9 Q. What was said to you then?

10 A. He asked me -- George Rivas asked me where the
11 guns were and I told him they were locked up in the gun
12 safe.

13 Q. Then what happened?

14 A. He said, "Let's go to the gunroom." And I
15 went back there and opened the door and he saw the safe
16 there and he told me to open the safe.

17 Q. Okay. That's where all the handguns were
18 kept?

19 A. Yes, sir. When they are not on display, they
20 are locked up in that safe.

21 Q. Let me show you State Exhibit 30. Is that a
22 photograph of the gun safe?

23 A. Yes, sir.

24 Q. And these wooden platforms that we see in
25 State Exhibit 32, what are those?

1 A. When we took the guns out of the display
2 cases, we put them on these boards in order of the way they
3 came out of the display case on the floor. That way the
4 next morning whoever opened up, they just go and pull that
5 up and they know which guns go where.

6 Q. State Exhibit 31, does that show the gun safe?

7 A. With the exception of the ones on top, yes,
8 sir.

9 Q. Now, had -- when you opened it, had it been
10 full of handguns on these wooden platforms?

11 A. Yes, sir, it was.

12 Q. What types of handguns are we talking about?

13 A. Semiautomatic pistols and revolvers.

14 Q. After you opened the gun safe, where did you
15 go then?

16 A. Opened up the gun safe and he said, "Let's go
17 out to the gun counter." And we went out to the gun counter
18 and he told Mr. Newbury that the guns were in the safe, to
19 go get them.

20 Q. Okay. Was there any other talk about the long
21 guns behind the counter?

22 A. Mr. Newbury asked him what about the locks,
23 what about the key for the rifle and shotguns.

24 Q. And did Mr. Rivas make another demand of you?

25 A. He asked me for the key and I pulled the key

1 out and showed him which one it was and handed it to him.

2 Q. Let me show you State Exhibit 27, which is a
3 closer view of that counter back there. Is that -- are
4 these the keys that you handed to him?

5 A. Yes, sir, it is.

6 Q. What are these boxes here behind the counter?

7 A. That's the ammunition for the guns.

8 Q. All the handguns, as well as the rifles and
9 shotguns?

10 A. Yes, sir.

11 Q. Let me show you State Exhibit 28. What do we
12 see there?

13 A. That's the racks for the rifles and shotguns.

14 Q. And does it appear that some of the rifles and
15 shotguns had been taken?

16 A. Yes. The arms are up on the racks, showing
17 they have been unlocked.

18 Q. State Exhibit No. 29, does that show a closer
19 view of the many different types of ammo that you had there
20 behind the counter?

21 A. Yes, sir.

22 Q. After you handed those keys over, where did
23 Mr. Rivas take you next?

24 A. He said, "Let's go back to the breakroom."
25 And we immediately went back for the breakroom.

1 Q. What was going on in the breakroom when you
2 got back there?

3 A. When I went back in the breakroom, I stood --
4 I was standing next to the refrigerator and Mr. Garcia and
5 Rodriguez were going through associates' pockets and tying
6 them up.

7 Q. Were most of the associates on their knees on
8 the ground

9 A. They were either laying on the floor or up
10 against the wall on their knees.

11 Q. Did he turn you over to someone specifically
12 at that time?

13 A. Not specifically. He just told them to get
14 everybody tied up, they were running out of time.

15 Q. What was done with you at that time?

16 A. Mr. Rodriguez came up to me. I had my back to
17 the refrigerator. He grabbed me on the shoulder, turned me
18 around, kicked me behind my knee, and told me to get on the
19 floor and put my head down.

20 MR. SHOOK: May I have the witness step
21 down for a moment, Judge?

22 THE COURT: You may.

23 Q. (By Mr. Shook) If you would kind of
24 demonstrate exactly how that was done to you. You be
25 Mr. Rodriguez. I'll be yourself, okay?

1 A. Okay. (Demonstrating) He came up to me and he
2 grabbed me by the shoulder and spun me around and kicked me
3 behind my knee and told me to, "Get down and put your hands
4 behind your back."

5 Q. And that forced you down to your knees?

6 A. Yes, he did.

7 Q. Was he gentle when he did that?

8 A. No, sir, he was not.

9 Q. Once you were down on your knees, what
10 happened next?

11 A. I believe it was him, because he's the one
12 that kicked me. He went through my pockets, took my wallet,
13 my keys to my house, and any -- I had a couple of dollars in
14 cash in my front pocket and he took all of that out.

15 Q. What was the emotional state of the employees
16 back there?

17 A. I could hear the -- I could hear the three
18 girls were crying. A couple of the younger male associates
19 were sniffing. Everybody was scared.

20 Q. Everybody was pretty scared. Were any other
21 threats made while you were back there?

22 A. Not that I can recall.

23 Q. Okay. Did you hear some communication over
24 the radio at some point in time?

25 A. While they were still tying us up, I heard

1 over the radio saying, "Hurry up. Let's go. We're running
2 out of time. Let's go now." And one of them responded they
3 didn't have everybody tied up yet and they said, "Hurry up.
4 We've got company."

5 Q. Once you heard, "Hurry up. We've got
6 company," what happened then?

7 A. One of them told us not to move for 10 minutes
8 or they would be back.

9 Q. Did they leave the room at that time?

10 A. They left the room. I heard the door close.

11 Q. Okay. After they left the room, what's the
12 next thing that you heard?

13 A. Next thing I heard was a -- about 35, 40
14 seconds later was a rapid succession of gunfire.

15 Q. So there was 35, maybe 45 seconds, and then
16 you heard gunfire?

17 A. Yes, sir.

18 Q. You said it was a rapid succession of gunfire?

19 A. Yes, sir.

20 Q. Once the gunfire started, could you describe
21 to the jury how rapidly it was?

22 A. It was just pop, pop, pop, pop, pop, pop,
23 short pause, and then another pop, pop, pop, pop, pop, pop.

24 Q. So it started up and it was basically one
25 right after the other except for a short pause?

1 A. Yes, sir.

2 Q. And when we're talking about a short pause,
3 are we talking about seconds or just a brief time?

4 A. Just seconds.

5 Q. Okay. Do you know how many shots were fired?

6 A. I estimated between 27 and 30 shots.

7 Q. Could you tell what area the shots were coming
8 from?

9 A. Sounded like the back of the store area.

10 Q. Once y'all heard the gunshots going off, what
11 happened in the room? Did everyone get -- as far as emotion
12 goes?

13 A. Some of the employees started to get real
14 panicky. One of them asked me what it was. And I told them
15 it was gunfire. I didn't know what they were shooting at.
16 For all I knew they could be just shooting into the air,
17 trying to draw attention. Maybe they thought they had got
18 away with it and they were just trying to draw attention to
19 the building.

20 Q. Did you try to keep everyone calmed down?

21 A. I told everybody just to be calm and stay
22 still.

23 Q. What's the next thing that happened?

24 A. I waited a few more seconds and I asked -- I
25 told everybody that I wasn't tied up. They didn't tie me

1 up.

2 Q. Okay. Let me show you State Exhibit 35 and
3 36. Is this the employee breakroom that you and the other
4 employees were left in?

5 A. Yes, sir, it is.

6 Q. And everyone was kind of up against the walls
7 there all around the room; is that right?

8 A. Yes, sir.

9 Q. You can see the next photo. Does that show
10 the floor area and some of the ties we were talking about
11 earlier?

12 A. Yes, sir, it does.

13 Q. And that was what was used to tie up the
14 employees?

15 A. That, along with some of our belts and
16 zipties.

17 Q. But for whatever reason you had not been tied
18 up?

19 A. No, sir, I was not.

20 Q. What did you do after you told everyone that
21 you had been tied up?

22 A. Told them I hadn't been tied up and one of the
23 girls told me -- asked me not to leave and I told them I
24 wasn't going nowhere. I rolled over and sat down off my
25 knees and I asked the other managers if any of them still

1 had their keys to the store.

2 Q. And were you able to get some keys?

3 A. Tim told me his were still in his left front
4 pocket.

5 Q. What did you do then?

6 A. I reached into his left front pocket and took
7 his keys and I went into the regional loss prevention
8 office, which was right there next to the breakroom and
9 picked up a secure line to -- and called the police.

10 Q. When you say "a secure line", what do you
11 mean?

12 A. There were two phones in that office. One of
13 them was a store line. If I had picked up on it, it would
14 have lit up on the other phones throughout the store,
15 showing somebody was on the phone. The secure line was not
16 -- was his own private line. It wasn't connected to the
17 stores lines, so they couldn't detect that I was on the
18 phone.

19 Q. Once you got on the secure line, what did you
20 do?

21 A. I called 911. The operator answered the phone
22 and I told her who I was and what had happened.

23 Q. Okay. What did you do then?

24 A. I then hung up and went back out and started
25 untying the other employees.

1 Q. Did you make another call sometime later?

2 A. After I untied some of the employees, I told
3 them to untie the rest of them, stay there in the room and
4 be quiet. And I went back in and called back to 911.

5 Q. Did you talk to the operator again at that
6 time?

7 A. Yes, sir, I did.

8 Q. Eventually were instructions given to you
9 about how to -- how you were going to get out of the store?

10 A. Yes, sir. The 911 operator eventually told me
11 to bring all the associates into that office and have them
12 get on the floor and put their hands behind their heads.

13 Q. Let me show you State Exhibit 37. Does this
14 show that office?

15 A. Yes, sir, it does.

16 Q. And did you bring all the employees into that
17 room pursuant to your instructions?

18 A. It was a tight fit, but, yes, sir, we did.

19 Q. Once they were in there, did you notify the
20 police?

21 A. I was on the phone constantly at that time
22 with the 911 operator and told them that everybody was in
23 the room.

24 Q. Okay. How were you taken out of that room?

25 A. The SWAT team finally came back there. I

1 could see them, the reflection off the tile underneath the
2 door in the hallway and I could hear them coming and they
3 opened the door. And the first one through the door kept
4 yelling, "Where is Wes? Where is Wes"?

5 Q. Did you identify yourself?

6 A. I was back behind the desk. I stood up and I
7 said, "Here I am." I stood up real slowly and said, "Here I
8 am." And they asked two or three times were there any bad
9 guys here, "Are there any bad guys here? And I said, "No,
10 they have all left."

11 Q. Then what happened?

12 A. He told everybody else, all the employees, to
13 stand up, keep their hands behind their head, and he patted
14 them down and led them out of that room and out of the store
15 one by one in a single file.

16 Q. Where did they take you out of the store,
17 which exit?

18 A. We went out the fire escape exit at the rear
19 end of the back of the exercise department.

20 Q. Okay. Let me show you State Exhibit 38. Does
21 that show the back of the store?

22 A. Yes. We came out underneath that light there
23 on the left.

24 Q. This light right here?

25 A. Yes, sir.

1 Q. And what direction did you go then?

2 A. We came out through the drive there and around
3 the back end of the fire truck and stood beside the fire
4 truck.

5 Q. Beside the fire truck right here?

6 A. Yes, sir.

7 Q. Now, you see this police car located here?

8 A. Yes, sir.

9 Q. Did you see it there that evening when you
10 came out?

11 A. Honestly, didn't notice it.

12 Q. But this is the back loading dock area you
13 talked about earlier?

14 A. Yes, sir.

15 Q. Okay. Once you were brought out by that fire
16 truck, what was done with you?

17 A. We were -- we stood out there for about
18 forty-five minutes to an hour. I was told that they were
19 bringing a bus down to take us all to the police
20 headquarters.

21 Q. It was pretty cold out there?

22 A. It was cold. It was drizzling. They tried to
23 separate me from the rest of the associates and put me in
24 the squad car. I asked if I could put the female associates
25 in the car and stand out with the male employees and they

1 said that was okay. Then the van showed up and took
2 everybody else down to police headquarters and I was there
3 at the scene.

4 Q. What did you do there at the scene?

5 A. While I was there at the scene, I was in the
6 back of the detective's car and I dictated a statement to
7 the detective.

8 Q. Was that Detective Johnson?

9 A. Yes, sir, it was.

10 Q. Did you write the statement out or did he?

11 A. I dictated it and he wrote it out.

12 Q. So you are just kind of telling him what
13 happened and he writes that down?

14 A. Yes.

15 Q. At some point in time were you taken down to
16 the Irving Police Department?

17 A. Around midnight, yes, sir.

18 Q. Were you shown a photo lineup?

19 A. Yes, sir, I was.

20 Q. And where was that?

21 A. It was in the police headquarters. It was 15
22 photographs on an eight-foot long table.

23 Q. Let me show you State Exhibit 41. Is that how
24 the photo lineup looked that evening?

25 A. Yes, sir.

1 Q. You saw these 15 black and white photos?

2 A. Yes, sir.

3 Q. And then let me show you what has been marked
4 as State Exhibit 45. Are these the same photographs and how
5 they were arranged?

6 A. Yes, sir, it is.

7 MR. SHOOK: Your Honor, at this time we
8 offer State Exhibit 45 for all purposes.

9 MR. KING: Judge, we renew our objection
10 made previously outside the presence of the jury. Do you
11 recall our objection?

12 THE COURT: I do.

13 MR. KING: I presume the Court's ruling
14 is the same?

15 THE COURT: Consistent. Overruled.
16 State 45 shall be admitted.

17 Q. (By Mr. Shook) This is how the photographs
18 were arranged as far as the order; is that correct?

19 A. Yes, sir.

20 Q. And were any suggestions made to you about who
21 you should choose or anything like that?

22 A. The only thing they told me to do was to take
23 my time, look at the photographs, do not look at things that
24 could change, for example, hair, but just look at eyes and
25 stuff like that and take my time and pick out if I could

1 pick out anybody that was in the store that evening.

2 Q. Were you able to make some selections that
3 night?

4 A. I made four positive identifications and two
5 possibles.

6 Q. Four positives and the two possibles?

7 A. Yes, sir.

8 Q. When you say positives, what did that mean to
9 you?

10 A. I know those four were in the store.

11 Q. Let's start at the top, who did you positively
12 identify that night from the photo lineup?

13 A. No. 4.

14 Q. Is that George Rivas?

15 A. George Rivas.

16 Q. And he was the one that you dealt with the
17 most?

18 A. Yes, sir.

19 Q. Who else?

20 A. No. 7, Michael Rodriguez.

21 Q. That's the man who kicked you from behind and
22 was in the back room?

23 A. Yes, sir.

24 Q. And you -- the other photograph had him with a
25 beard. Is he more this clean shaven that night?

1 A. Yes, sir.

2 Q. Who else on the second one?

3 A. Nobody on the second line was a positive
4 identification. No. 11, Donald Newbury.

5 Q. That's the man you saw back at the gun rack
6 near the gun rack?

7 A. Yes, sir.

8 Q. And who else?

9 A. No. 15, Joseph Garcia.

10 Q. Joseph Garcia. He was the one nearest you
11 that you heard make the threat to Mr. Lindley?

12 A. Yes, sir.

13 Q. You also said that you had two others that you
14 were pretty sure of?

15 A. I had two others that I possibly, but they
16 said -- they asked me if I could identify them in court and
17 I said, "I don't know." And they said, "Don't worry about
18 those."

19 Q. Okay. Who were those two?

20 A. No. 2 and No. 9.

21 Q. No. 9, did you later come to find out his name
22 was Larry Harper?

23 A. Yes, sir.

24 Q. Which individual was he that you had seen?

25 A. He was the other one dressed in the security

1 guard uniform.

2 Q. And No. 2, did you later come to find his name
3 to be Randy Halprin?

4 A. Yes, sir, I did.

5 Q. What area of the store did you see him in?

6 A. I believe up at the front after he announced
7 this is a robbery. And then when Mr. Rivas and I came back
8 up to customer service, I believe he was the gentleman that
9 was behind customer service and as he saw us coming up, he
10 left that part of the store.

11 Q. When you talk about at the beginning of the
12 robbery, you talking about when Mr. Rivas said, "All the
13 individuals are with me"?

14 A. Yes, sir.

15 Q. And you saw everyone in a semicircle with guns
16 out?

17 A. Yes, sir.

18 Q. All the -- you had previously thought they
19 were all in the store shopping; is that right?

20 A. Yes, sir.

21 Q. And turned out all the shoppers turned out to
22 be with Mr. Rivas and actively participated in that robbery?

23 A. Yes, sir.

24 Q. And you recall all of them had some type of
25 handguns out at that time?

1 A. Yes, sir.

2 Q. Do you see Mr. Halprin in the courtroom today?

3 A. I believe he's sitting over here, sir.

4 Q. Here at the end in the blue shirt and coat and
5 tie?

6 A. Yes, sir.

7 MR. SHOOK: Your Honor, let the record
8 reflect the witness has identified the defendant.

9 Q. (By Mr. Shook) The gun that Mr. Rivas pointed
10 at you, you said that was a .357 revolver?

11 A. Yes, sir.

12 Q. Let me show you State Exhibit No. 39. Is that
13 what the gun looked like?

14 A. Yes, sir, it is.

15 Q. And then he also had a little radio. Let me
16 show you State Exhibit 40. Is that what the radio looked
17 like?

18 A. Yes, sir.

19 Q. If we could see 39 for the jury. That's the
20 type of revolver that Mr. Rivas had?

21 A. Yes, sir, it is.

22 Q. And State Exhibit 40 is the type of radio he
23 was communicating with?

24 A. Yes, sir.

25 Q. Were you asked to try to get a list of the

1 types of weapons that were taken in the robbery?

2 A. That night they asked me if I could get them a
3 list of everything that was taken. I didn't think that I
4 could at that time, but Monday after Christmas I was back at
5 the store early and I did get a complete list.

6 Q. Okay. And did that list -- were you able to
7 determine through your inventory exactly which weapons had
8 been stolen?

9 A. Yes, sir.

10 Q. Let me show you State Exhibits 46, 47, and 48.
11 Are these lists that contain the information of the weapons
12 that were taken, along with the type and serial numbers?

13 A. Yes, sir.

14 MR. SHOOK: Your Honor, at this time we
15 offer State Exhibits 46, 47, and 48.

16 MR. ASHFORD: No objections.

17 THE COURT: Nos. 46, 47, and 48 shall be
18 admitted.

19 Q. (By Mr. Shook) Looking at State Exhibit 46,
20 this lists -- what's the first name we see here? What does
21 that represent?

22 A. On the first one that's a Beretta. That's the
23 manufacturer of the gun.

24 Q. What's this information here?

25 A. The next in black is the model number and

1 caliber of that specific weapon. In that case that's a
2 Model 92-FS 9 millimeter pistol.

3 Q. The information in the blue lettering, what is
4 that?

5 A. That's the serial number for that specific
6 gun.

7 Q. So each specific weapon has an individual
8 serial number; is that right?

9 A. Yes, sir.

10 Q. And the other exhibits track all the handguns,
11 as well as the long guns that were taken; is that right?

12 A. Yes, sir.

13 Q. A total of 44 weapons were taken?

14 A. Yes, sir.

15 Q. Thirty-four handguns?

16 A. Yes, sir, it was.

17 Q. Okay. Were you also able to determine what
18 types of ammunition were taken?

19 A. Yes. After I completed the gun inventory, I
20 did an inventory of the rest of the merchandise back there
21 and I determined that there were several boxes of .357
22 Magnum nine millimeter and .45 caliber ammunition missing.

23 Q. Was there other types of inventory or
24 merchandise taken from the store during the robbery?

25 A. Yes, sir. Specifically from my department,

1 there was some -- I believe a couple of pair of binoculars
2 and a couple more radios. And from other departments there
3 was some clothing, winter clothing, and some sleeping bags.

4 Q. Do you have night vision equipment there?

5 A. Yes, sir, we do.

6 Q. Do you know if any of that was missing?

7 A. I believe one night vision scope was taken.

8 Q. And you said the amount of cash over the three
9 days taken was about \$71,000?

10 A. Yes, sir.

11 Q. Was anything else taken to your knowledge?

12 A. Not that I can recall, no, sir.

13 Q. Now, State Exhibit 49 and 50, are these your
14 photographs of your car?

15 A. Yes, sir.

16 Q. Did you go by -- or was your car eventually
17 returned to you from the police?

18 A. About 30 days later, yes, sir.

19 Q. Was there some damage done to the car?

20 A. Yes, sir, to the right rear of the vehicle.

21 Q. What type of damage was it?

22 A. There was some damage when they -- apparently
23 when they backed out where they had it parked behind the
24 store, they used it to push the patrol car out of the way.
25 Did some damage to the right rear fender and bumper and

1 there were also two bullet holes on the inside of the
2 driver's side door and the passenger door front, the window
3 was -- the glass was either broken out or shot out.

4 Q. The statement that Detective -- you dictated
5 to Detective Johnson, you have gone into more detail today;
6 is that right?

7 A. Yes, sir.

8 Q. Was everyone -- who did it appear was in
9 charge of the operation that night?

10 A. George Rivas.

11 Q. Did it appear everyone there, all the robbers
12 in the store, were they acting as a team?

13 A. Yes, sir.

14 Q. Were they acting together?

15 A. They were acting together as a team.

16 Q. Did you fear for your life, as well as the
17 life of the other employees?

18 A. Yes, sir, I did.

19 Q. And for the record, is that Oshman's store
20 located in Dallas County and the State of Texas?

21 A. Yes, sir, it is.

22 MR. SHOOK: We'll pass the witness.

23 CROSS-EXAMINATION

24 BY MR. ASHFORD:

25 Q. Mr. Ferris, my name is George Ashford. We

1 have never met, have we?

2 A. No, sir.

3 Q. All right. I'm representing Mr. Halprin and
4 I'm going to be asking you a few questions.

5 You said a second ago your vehicle was used to
6 push the patrol car out of the way, correct?

7 A. Yes, sir.

8 Q. Okay. Now, you don't know that?

9 A. I don't know that, but I was told.

10 Q. So you have been told things about what
11 happened in this case, obviously, correct?

12 A. Yes, sir.

13 Q. And who might have told you how your vehicle
14 was used?

15 A. I believe it was one of the detectives from
16 the Irving Police Department.

17 Q. Okay. Now, fair enough to say you have been
18 dealing with this for two years, correct?

19 A. Yes, sir.

20 Q. This is the fifth trial you have testified in?

21 A. Yes, sir.

22 Q. Okay. There's a lot of information that you
23 received that came from other sources, correct?

24 A. Some, yes, sir.

25 Q. Okay. You looked at news accounts of this

1 event or had to be weeks after this happened, correct?

2 A. Yes, sir.

3 Q. And when those news accounts occurred, they
4 had those pictures that are behind you there, correct?

5 A. Similar pictures, yes, sir.

6 Q. And you have testified previously that
7 actually you had seen pictures of those individuals before
8 the Oshman's robbery; is that correct?

9 A. After they escaped there was one or two news
10 blurbs on the local news about the escape and they showed
11 pictures then. But I didn't pay much attention to it
12 because it was down south of San Antonio.

13 Q. But you did see those?

14 A. Yes, sir.

15 Q. Okay. Now, you just said George Rivas
16 appeared to be in charge; is that correct?

17 A. Yes, sir.

18 Q. He spent, it sounds like, the entire time this
19 robbery took place, he pretty much spent with you; is that
20 correct?

21 A. Yes, sir.

22 Q. Now, did he ever lose that calm demeanor at
23 any time?

24 A. George Rivas never gave me the impression at
25 any time that he wanted to hurt anybody, but he also gave me

1 the impression that he wouldn't hesitate, if it became
2 necessary.

3 Q. Okay. So that's a different question than
4 what I asked you, but that's a good point. He made you feel
5 confident that it was not his desire to hurt anybody,
6 correct?

7 A. Yes, sir.

8 Q. Now, what I asked you was, as far as his
9 demeanor, did he ever lose that calm demeanor?

10 A. No.

11 Q. Who was it that appeared to be a little edgy
12 that you testified about that said somebody would jump you
13 and they were looking to do something?

14 A. Joseph Garcia.

15 Q. Joseph Garcia. Okay. Rivas never acted like
16 that at all?

17 A. No, sir.

18 Q. Did you -- was there a point where you ever
19 heard or saw Rivas give anybody else instructions or orders?

20 A. Only what I heard over the radio.

21 Q. Okay. You heard him talking to whoever was on
22 the radio?

23 A. Yes, sir.

24 Q. And, I mean, that being a person outside?
25 That being one of the people inside? Or what?

1 A. I don't know. They all had radios, so I don't
2 know who he was specifically talking to.

3 Q. Okay. Well, did it appear that he was giving
4 people orders over the radio?

5 A. Yes, sir.

6 Q. Okay. Who actually had on security uniforms?

7 A. It was George Rivas and I believe it was Larry
8 Harper.

9 Q. Rodriguez or Garcia have uniforms on?

10 A. No, sir.

11 Q. So where was Harper when you first encountered
12 Rivas and Rivas was asking you to gather up people to look
13 at the lineup?

14 A. When I first encountered Rivas back by the
15 exercise department, he mentioned to me that his partner had
16 gone to the restroom.

17 Q. Okay. And when is the first time you saw him?

18 A. After we came back out of the video room the
19 first time when I told him the cameras were just recording
20 on the entrances and exits and we went back up to customer
21 service, he was up there in that area again.

22 Q. Now, isn't it true that they actually had
23 holstered guns? They walked in wearing guns, those two?

24 A. I did not see a handgun -- I did not see a gun
25 on anybody.

1 Q. So you didn't notice that?

2 A. No, sir.

3 Q. So the first time you saw guns was when?

4 A. After Rivas announced this is a robbery and I
5 turned around and he was holding a gun up in the air.

6 Q. And then what did you see as far as
7 individuals goes?

8 A. He lowered his gun and pointed it to me at my
9 chest and said, "Don't try it, Wes. If you do, I'll have to
10 shoot you and if I shoot you, I'll have to shoot everybody.
11 All the customers are with me." I turned and looked back
12 and I saw what I believed was six to eight individuals, all
13 males, and they all had handguns.

14 Q. Okay. Is that six to eight, counting Rivas?

15 A. Six to eight in addition to Rivas.

16 Q. In addition to Rivas?

17 A. Because they were behind us.

18 Q. So with Rivas that would have been seven to
19 nine individuals that had guns; is that correct?

20 A. Yes, sir.

21 Q. Okay. Now, did someone make the statement,
22 "I've got six or eight guys in here with me?"

23 A. No.

24 Q. Okay. You don't recall Rivas saying, "I have
25 six or eight guys in here with me"?

1 A. No, I do not. The only thing I recall Rivas
2 saying is all the customers were with him.

3 Q. Okay. So you don't think that you are getting
4 your six to eight figure from something that was said by
5 Rivas?

6 A. No, sir.

7 Q. Now, you have testified in four previous
8 trials; is that correct?

9 A. Yes, sir.

10 Q. Now, in Mr. Rivas' trial, do you recall how
11 many individuals you said had guns?

12 A. I believe I said the same thing, sir.

13 Q. Okay. Would it surprise you to know that your
14 response was different?

15 A. It may have been, sir, I don't know.

16 Q. How long did you have to look and focus on
17 these individuals before you moved on to the next task Mr.
18 Rivas asked you to do?

19 A. When he told me they were all with him, I
20 stepped back and turned and looked and I looked around the
21 room and I saw what I thought was six to eight people. All
22 of them had guns and I turned back to Mr. Rivas.

23 Q. Would it surprise you that you said five or
24 six people in the Rivas trial?

25 A. I don't recall what I said, sir.

1 Q. Okay. If I told you that's what you said,
2 would you dispute that?

3 A. No, sir.

4 Q. If I told you in the Newbury trial that you
5 said there were several men with guns out, but you didn't
6 name how many, would that surprise you?

7 A. No, sir.

8 Q. Okay. If I told you in the Rodriguez trial
9 that you said three or four other men, would that surprise
10 you?

11 A. No, sir.

12 Q. Okay. Well, if including Mr. Rivas you had
13 three men, that's four men total. Including Mr. Rivas, you
14 had nine men, that's 10 men total, correct?

15 A. You are adding Rivas twice there.

16 Q. I'm saying in one example, if it's Rivas plus
17 three guys, that would total four guys, right?

18 A. Yes, sir.

19 Q. And in the other instance, if it's Rivas plus
20 nine guys, then you have got ten people there, right?

21 A. I said six to eight, sir. That would be nine,
22 counting Rivas.

23 Q. Okay. So there is a big difference between
24 four and nine, correct?

25 A. Yes, sir.

1 Q. Okay. Now, you are telling the jury today
2 that you tentatively identified one of those people as being
3 Mr. Halprin that had his gun out?

4 A. Yes, sir.

5 Q. Well, there were six people altogether. And
6 you turned around and you saw three people in addition to
7 Mr. Rivas with guns.

8 MR. SHOOK: Judge, I object to him
9 mischaracterizing his testimony. He didn't say there were
10 three people.

11 THE COURT: Overruled.

12 Q. (By Mr. Ashford) If you saw three people in
13 addition to Mr. Rivas with guns, that would leave the
14 possibility that there were two other people floating around
15 in the store somewhere, correct?

16 A. That would leave a possibility. But what I
17 said was six to eight with guns.

18 Q. Okay. But in Mr. Rodriguez's trial you said
19 three people plus -- you said three or four other people
20 with guns, correct?

21 A. Yes, sir.

22 Q. So in that scenario, if we stick to that,
23 knowing that there were six individuals, that would leave
24 the potential for two other people to be out of sight in the
25 store somewhere, correct?

1 A. Yes, sir.

2 Q. Okay. Now, if you up that number to five or
3 six, then that places everybody right there in the front of
4 the store with the gun, correct?

5 A. Yes, sir.

6 Q. And that's what you are doing here today,
7 correct?

8 A. Yes, sir.

9 Q. And you are doing that because it's Mr.
10 Halprin's trial and that would include him in that number,
11 correct?

12 A. No, sir. I'm telling you what happened that
13 night.

14 Q. Okay. How long did you get to look over your
15 shoulder and see these three, four, five, or six men?

16 A. I had about -- I looked back there for about
17 25 or 30 seconds.

18 Q. Okay. Well, I believe just about an hour ago
19 you said about 15 seconds, right?

20 A. I said 15 or 20, maybe.

21 Q. Can you see how these details are important
22 whether it's 15 seconds or 25 seconds or whether it's three
23 men or eight men?

24 A. Yes, sir.

25 Q. Okay. Now, after you had this glance and

1 turned around and saw these men with guns, what's the next
2 thing that you had to do?

3 A. He told us to turn to the right and he asked
4 me where to -- where I could put -- where there was a room
5 big enough to put all the associates in.

6 Q. So your attention turned back to Mr. Rivas?

7 A. Yes.

8 Q. So when you look around and you see, as you
9 say, Mr. Halprin with a gun, what do you notice about him?
10 Tell the jury what you see.

11 A. Well, like I said, that night when I
12 identified the photographs, it was a possible
13 identification, a probable identification. It wasn't a
14 positive identification on him. But when I turned around
15 and I saw these other individuals with the guns, I see six
16 to eight individuals, all of them with guns out, standing
17 behind the associates in a sort of a semicircle.

18 Q. What you are telling the jury is everybody
19 that you turned around and saw that wasn't an Oshman's
20 employee, you realized was with Mr. Rivas, correct?

21 A. Yes, sir.

22 Q. And today you are putting a gun in everybody's
23 hand?

24 A. They all had guns in their hand, yes, sir.

25 Q. Tell me specifically what you recognized about

1 the person that you thought was Mr. Halprin? What was he
2 wearing?

3 A. I don't remember what he was wearing that
4 night, sir.

5 Q. Okay. Well, you just testified about an hour
6 ago, okay, and you had some kind of idea then what you
7 thought he was wearing, correct?

8 A. I said it was possible identification. They
9 didn't list it on my identification because they asked me if
10 I could identify him in court. I didn't know.

11 Q. Well, certainly December 24th, 25th, of 2000,
12 the image would have been clearer in your mind than two and
13 a half or three years later, correct?

14 A. Yes, sir.

15 Q. Okay. And Mr. Shook asked you, do you see him
16 in the courtroom? And you looked over there and you said,
17 yeah, that's him right there, correct?

18 A. Yes, sir.

19 Q. Okay. So if you weren't sure that you can
20 identify him, you are telling us that you can identify him
21 that easily now, but you couldn't then?

22 A. After that night when I made that possible
23 identification, I made the identification that night, the
24 next day on the news they brought up the photographs on
25 there and I told -- and I knew immediately then that they

1 were there. And I told the DA's Office about that later.

2 Q. So your identification was aided by the
3 pictures that you saw on the news?

4 A. The next day, yes, sir.

5 Q. And that aids your identification here,
6 correct?

7 A. Based off what I saw that night, yes, sir.

8 Q. As well as the fact that five previous times
9 you have come into court and looked at that board that's
10 behind you with all those pictures on it, correct?

11 A. Yes, sir.

12 Q. But what I'm asking you is, if you look back
13 on December 24th of 2000 and you say Randy Halprin was one
14 of the guys that had a gun, tell me something specific that
15 makes you remember him, the clothing he was wearing, facial
16 features, what hand he had the gun in, what type of gun it
17 was, tell me any of that.

18 A. If I remember correctly, he was standing back
19 by one of the registers and I believe the gun was in his
20 right hand.

21 Q. Okay. Now, this morning you said that he had
22 on dark clothing, maybe a dark shirt and bluejeans.

23 A. Possibly that night, yes, sir.

24 Q. Possibly?

25 A. I don't remember what they all had on.

1 Q. Just remember their faces. Now, you testified
2 in Mr. Rivas' trial, you testified in Mr. Rodriguez's trial,
3 Mr. Newbury's trial, and Mr. Garcia's trial, I believe, in
4 that order; is that correct?

5 A. Yes, sir.

6 Q. Okay. And you didn't mention this potential,
7 possible ID of Mr. Halprin until the fourth trial; is that
8 correct?

9 A. I believe so, yes, sir.

10 Q. Okay. This didn't come up in the other three?

11 A. No, sir.

12 Q. Nobody asked you what you saw in detail and
13 who you saw or anything like that?

14 A. No, sir.

15 Q. Okay. So you testified a minute ago you saw
16 him holding this gun in his right hand?

17 A. I believe so, yes, sir.

18 Q. You believe so?

19 A. Yes, sir.

20 Q. Are you sure about that today?

21 A. This was two and a half years ago, sir.

22 Q. Well, is that a yes or no?

23 A. Yes.

24 Q. Are you sure about that today?

25 A. I'm sure he had a gun, yes, sir.

1 Q. Okay. All right. So you don't know any
2 details, you don't really remember, you are not sure about
3 whether it was in his right hand, you are not sure about the
4 clothes, you are sure he had a gun, correct?

5 A. Yes, sir.

6 Q. And you know it's important for the State to
7 place a gun in his hand, don't you, sir?

8 A. I believe it is important, yes, sir.

9 Q. And you want to help them with that?

10 A. I'm telling the truth, sir.

11 Q. Okay. Now, you remember Mr. Rivas
12 specifically because he did everything in this robbery,
13 correct?

14 A. He was the leader, yes, sir.

15 Q. All right. Do you remember Mr. Rodriguez
16 specifically because of what?

17 A. He kicked me.

18 Q. He kicked you. All right. That's something
19 pretty significant, right?

20 A. Yes.

21 Q. And he spun you around, so he saw you face to
22 face and then he kicked you, so you had a good look at him,
23 right?

24 A. Yes, sir.

25 Q. Do you remember Mr. Newbury specifically

1 because of what?

2 A. He was back at the gun department.

3 Q. Okay. Anything else that you remember him
4 specifically about?

5 A. He was back there when we went back there when
6 Mr. Rivas and I went back there he was back there and he's
7 the one that asked about the guns.

8 Q. He made a specific question. He was talking
9 about the guns?

10 A. Yes, sir.

11 Q. Okay. He was the one that said the pistols
12 were gone?

13 A. Yes, sir.

14 Q. Okay. So he was -- obviously had been looking
15 and searching for them. That was his job to get the guns,
16 it would appear, correct?

17 A. Yes, sir.

18 Q. You remember Mr. Garcia specifically for what
19 reason?

20 A. Because of his, I would say his threatening
21 gestures toward one of the other employees.

22 Q. And that would be something pretty significant
23 that would catch your attention, correct?

24 A. Yes, sir.

25 Q. Okay. All right. And you remember Mr. Harper

1 specifically for what?

2 A. I believe he was the other one with the
3 uniform, the security guard uniform on.

4 Q. Okay. So all those people did specific things
5 that you remember, correct?

6 A. Yes, sir.

7 Q. Okay. And your testimony was that you believe
8 Mr. Halprin was up in the front of the store when you walk
9 up there with Rivas, but he turned and went away?

10 A. Yes.

11 Q. Okay. Nothing really significant about that,
12 no violence, no conversation, no leading role, correct?

13 A. No, sir.

14 Q. And you believe he was one of the ones up
15 there with the gun, although you are not sure whether it was
16 four people or nine people?

17 A. I'm not sure. I'm sure it was six to eight
18 people.

19 Q. Okay. Do you remember Mr. Halprin for
20 anything else?

21 A. No, sir.

22 Q. Okay. You started out before you encountered
23 Mr. Rivas, you took a real long walk around the store to
24 look around to see what customers were there and start
25 clearing people out. Did you see him then?

1 A. Not that I can recall, no, sir.

2 Q. Okay. Did you see him over in the field and
3 stream section, which is the area you managed?

4 A. No, sir.

5 Q. Did you see him back in the breakroom when
6 they first took you back there or any time that they were
7 leading you back there?

8 A. No, sir.

9 Q. Okay. Did you see him back in the breakroom
10 when people were being tied up and pushed back in the
11 corner?

12 A. No, sir.

13 Q. Okay. Did you see him over in the gun section
14 with Newbury?

15 A. No, sir.

16 Q. You're pretty sure Garcia and Rodriguez were
17 the people back there that were tying people up and going
18 through their pockets, correct?

19 A. Yes, sir.

20 Q. Did you see Mr. Halprin back there?

21 A. No, sir, I did not.

22 Q. Now, did Rivas order a couple of the guys to
23 change into Oshman's shirts so they would look like they
24 were employees?

25 A. He told the employees -- he said, take two of

1 the employees' shirts off and told two of his -- two of the
2 men with him to put them on.

3 Q. Was Mr. Halprin one of them?

4 A. I don't know for sure if he was or not.

5 Q. Okay. If he was, you don't remember that?

6 A. No, sir.

7 Q. Okay. And you haven't mentioned that in any
8 previous testimony in four other trials nor in your
9 statement, have you?

10 A. No, sir.

11 Q. You stated that when Rivas said, "This is a
12 robbery," you turned around and all these guys had guns, you
13 said pretty much the employees were up at the front of the
14 store, correct?

15 A. Most of them were, yes, sir.

16 Q. Most of them. So you testified, also, that
17 somebody brought Laura from the back up to the front,
18 correct?

19 A. Yes, sir.

20 Q. So all of the employees weren't up at the
21 front?

22 A. Yes, sir, that's what I said.

23 Q. Mr. Halprin, also, was not one of the ones who
24 gave -- who wore a uniform, correct?

25 A. No, sir.

1 Q. Okay. Now, you said when they showed you the
2 photo ID, they told you to look at things that -- look at
3 things that won't change, not at things that could change;
4 is that correct?

5 A. Yes, sir.

6 Q. Okay. Did that suggest to you in any way that
7 maybe some things had changed, maybe these weren't current
8 pictures?

9 A. It doesn't suggest to me that. It just told
10 me they were giving me an indication that people do change.

11 Q. All right. Now, on that day when you gave
12 your -- you gave a statement on the 24th of December 2000,
13 correct?

14 A. Yes, sir.

15 Q. Okay. Did you do the lineup that very same
16 day late into those morning hours or did you come back and
17 do that later?

18 A. That same night, that same evening.

19 Q. Okay. I'm sure in preparation for the trials
20 you came and probably talked to Mr. Shook and maybe talked
21 to some other detectives, correct?

22 A. I talked to Mr. Shook.

23 Q. Before you met Mr. Shook, did you do other
24 followup? For instance, you testified you went that Monday
25 and gave the gun inventory, correct?

1 A. Yes, sir.

2 Q. Did you go any other time and talk to
3 detectives and give more investigation about what you saw,
4 correct? Did you do that?

5 A. No, sir.

6 Q. Okay. All right. So the first time you
7 talked to anybody after updating your information with the
8 guns, was that somebody in the DA's Office?

9 A. That was Mr. Shook in the DA's Office.

10 Q. All right. And did you know that you know you
11 had the opportunity to supplement and add to whatever
12 statements you had made, whatever things that you remembered
13 at any time?

14 A. I didn't know that, no, sir.

15 Q. Okay. Is there anywhere that you can think of
16 that you ever mentioned in a statement, in some kind of
17 writing, that back on December 24th you made a potential ID
18 of Randy Halprin?

19 A. Not in writing, no, sir.

20 MR. ASHFORD: May I approach the witness,
21 Your Honor?

22 THE COURT: You may.

23 Q. (By Mr. Ashford) I'm going to show you what
24 has been marked as Defendant's Exhibits No. 22 and 23 and do
25 you recognize those?

1 A. Yes, sir, I do.

2 Q. Okay. And are those -- are those your
3 initialed -- initials as to which pictures you identified
4 and a little statement that explains that?

5 A. Yes, sir.

6 Q. Does that contain your signature?

7 A. Yes, sir, it does.

8 MR. ASHFORD: Your Honor, at this time I
9 offer Defendant's 22 and 23 for all purposes.

10 MR. SHOOK: No objection.

11 THE COURT: No. 22 and 23 shall be
12 admitted.

13 Q. (By Mr. Ashford) Mr. Ferris, what they asked
14 you to do was to go along and look at these pictures and
15 identify who you could. And you identified No. 4, No. 9,
16 and No. 11 and No. 15; is that correct?

17 A. Yes, sir.

18 Q. And you were looking at the pictures that are
19 so numbered on State Exhibit No. 45, this big board here,
20 correct?

21 A. Yes, sir.

22 Q. Those are the pictures that are on the table?

23 A. Yes, sir.

24 Q. Anywhere does it say on there that you
25 tentatively identified, you thought you might have

1 recognized No. 2?

2 A. No, sir.

3 Q. Okay.

4 MR. ASHFORD: Publish those to the jury,
5 Your Honor?

6 THE COURT: You may.

7 Q. (By Mr. Ashford) Now, when the -- when Rivas
8 came into the store, he showed you photos that are depicted
9 on State Exhibit No. 17, correct?

10 A. Yes, sir.

11 Q. And those are the photos on the counter of
12 people lined up and that's what he asked you to look at,
13 correct?

14 A. Yes, sir.

15 Q. And that's really basically the same type of
16 thing that the State asked -- that the Irving police asked
17 you to do with these pictures here; is that correct?

18 A. Yes, sir.

19 Q. And these are the pictures on State Exhibit
20 No. 45, correct?

21 A. Yes, sir.

22 Q. Okay. And you brought some employees up there
23 to look at them, correct?

24 A. Yes, sir.

25 Q. And Sandra Rodriguez picked two people out of

1 that lineup, did she not?

2 A. She said she thought at least two of these
3 people had been in the store earlier that day.

4 Q. And a minute ago you said or a few minutes ago
5 you said she possibly identified somebody, but she actually
6 did identify somebody. It's more than a possible, correct?

7 A. I don't know if she -- she said she identified
8 two of those people had possibly been in the store there
9 that day.

10 Q. Well, in your statement you said Sandra said
11 she had seen two of the people in the store that day,
12 correct?

13 A. Yes, sir.

14 Q. Okay. And she had been positive enough that
15 she saw two people in the store for you to ask her what time
16 of day they had been in the store, correct?

17 A. Yes, sir.

18 Q. Okay. You know now that Rivas and Harper were
19 not real security people, correct?

20 A. That's correct.

21 Q. All right. You know the pictures that they
22 brought in there were probably some kind of bogus pictures
23 they copied out of a magazine or newspaper or something,
24 correct?

25 A. Yes, sir.

1 Q. Okay. What does that tell you about
2 Ms. Rodriguez's identification skills?

3 MR. SHOOK: Judge, we'll object to that.
4 It's trying to impeach a witness who hasn't testified yet.
5 I don't think that's relevant.

6 THE COURT: Sustained.

7 Q. (By Mr. Ashford) We'll take you back, again,
8 to when Mr. Rivas pulls out the gun and he says, "This is a
9 robbery," correct?

10 A. Yes, sir.

11 Q. Okay. And at that point in time you say you
12 turn around and you see other individuals and they all had
13 guns; is that correct?

14 A. Yes, sir.

15 Q. Okay. Now, was Laura the one that had been in
16 the restroom or was there another individual who had been in
17 the restroom?

18 A. She was brought up from the back from that
19 area. I don't know if she was in the restroom or not.

20 Q. Who brought her up?

21 A. I don't know which one of them brought her up.

22 Q. Okay. And when she was brought up, were her
23 thumbs ziptied?

24 A. Her thumbs were ziptied together.

25 Q. So do you think that one of the robbers

1 ziptied her thumbs and left her in the back and then walked
2 up to the front with the other robbers and Mr. Rivas and
3 then went back and got her?

4 A. I believe one of them brought her up there,
5 sir. I don't -- it was after it was announced it was a
6 robbery.

7 Q. So there had to be somebody in the back?

8 A. Yes, sir.

9 Q. Okay. And there were people on the radio?

10 A. Yes, sir.

11 Q. Okay. Mr. Rivas was talking on the radio in
12 the front to somebody who was obviously not in the front,
13 correct?

14 A. Yes, sir.

15 Q. Okay. And so obviously all of the robbers
16 were not in the front at the time Mr. Rivas pulled his gun.
17 Would that be a fair statement, sir?

18 A. Yes, sir.

19 Q. All right. Now, you know now from everything
20 that you have been through, the trials, that only seven
21 people were involved in this, correct?

22 A. Yes, sir.

23 Q. You know now, do you not, that one person was
24 outside, correct?

25 A. Yes, sir.

1 Q. Okay. That leaves six, correct?

2 A. Yes, sir.

3 Q. All right. Not counting Mr. Rivas, that
4 leaves five; is that correct?

5 A. Yes, sir.

6 Q. Okay. And there was at least one person in
7 the back. There couldn't have been but four additional
8 individuals in the front, correct?

9 A. Yes, sir.

10 Q. Okay. And if there was more than one
11 individual in the back, then it's more likely there was only
12 two or three people in the front, correct?

13 A. It's possible, yes, sir, but I know what I
14 saw.

15 Q. Okay. Well, when you testified in one of the
16 trials, there was three or four other people in the front
17 and then you are testifying in this trial that there were
18 five or six, six or eight other people. Do you see the
19 significance there?

20 A. Yes, sir.

21 Q. All right. That means somebody couldn't have
22 possibly been up front. The numbers just don't work out,
23 would you agree?

24 A. Yes, sir.

25 Q. Okay. But once again, you recognize Rivas,

1 because he was with you the whole time. You recognize
2 Rodriguez because he did something to you. You recognize
3 Newbury because he had a specific conversation about the
4 guns. You recognize Garcia because, what, he kicked you?
5 Is he the one?

6 A. No. Garcia I recognized because he's the one
7 that made the threatening gestures.

8 Q. He's the one that made the threat, okay. And
9 you recognize Harper because he had a uniform, also?

10 A. Yes, sir.

11 Q. Okay. All significant actions, would you not
12 agree?

13 A. Yes, sir.

14 Q. Where is the apparel section and where are the
15 clothing, the fitting rooms, in relation to the front? If I
16 can come back up there and look at that exhibit again.
17 Where would the apparel be?

18 A. That center section right there, yes, sir.

19 Q. Center. Okay?

20 A. And fitting rooms are right there above your
21 hand to your left a little bit, sir, across the aisle up a
22 little higher.

23 Q. Okay. Now, when Rivas pulled the guns up here
24 by customer service --

25 A. Yes, sir, we were up there at customer

1 service.

2 Q. -- right? All right. You testified that you
3 looked over your shoulder 15 or 20 seconds, 20 or 25
4 seconds, and I reminded you that about an hour or so you
5 said about 15 seconds. Do you remember that?

6 A. Yes, sir.

7 Q. All right. If I told you that in the Rivas
8 trial you said that you glanced over your shoulder, would
9 you dispute me on that?

10 A. No, sir.

11 Q. Okay. Do you see the significance in the
12 difference in time from glancing over your shoulder, as
13 opposed to looking over your shoulder for 15 or 20 seconds
14 when we're talking about seeing somebody and identifying
15 somebody? Do you see the significance there?

16 A. Yes, sir.

17 Q. Okay. All right. So which do you think it
18 is? You glanced over your shoulder or you looked for 15 or
19 20 seconds?

20 A. I looked over my shoulder for 15 or 20
21 seconds.

22 Q. Okay. I want to ask you to go when my
23 secondhand hits the nine here and say the word "stop" 15
24 seconds later and see if you think that's how long you
25 looked. Okay?

1 A. Okay.

2 Q. I'm up here sooner than I thought I was, so
3 let's start on 8. Okay? All right. We're on 8. Go now.

4 A. [Witness complies.] Okay, stop.

5 Q. Well, that was about 17 seconds exactly. Were
6 you counting or were you trying --

7 A. No.

8 Q. You were trying to see how long it was that
9 you thought you looked over your shoulder?

10 A. Yes, sir.

11 Q. Okay. And so that's what you think you did?

12 A. Yes, sir.

13 Q. Okay. And you did that with Rivas right in
14 your face with a gun?

15 A. He pointed -- he said, "All the customers are
16 with me," and I turned and looked.

17 Q. So he's got the gun in front of you and he's
18 telling you all the customers are with him?

19 A. Yes, sir.

20 Q. Okay. And he's standing how far away from
21 you?

22 A. Probably less than five feet.

23 Q. Okay. And you turn your head away from his
24 gun and that's how long you turned around and looked?

25 A. Yes, sir.

1 MR. ASHFORD: I'll pass the witness.

2 REDIRECT EXAMINATION

3 BY MR. SHOOK:

4 Q. Mr. Ferris, first of all, were you timing how
5 long you were looking at people that night?

6 A. No, sir, I was not.

7 Q. When you give these estimates of time, that's
8 what it is, an estimate; is that right?

9 A. Yes, sir.

10 Q. Okay. And you gave -- you said you dictated a
11 statement to Detective Johnson that very night; is that
12 right?

13 A. Yes, sir.

14 Q. While you were in the police car?

15 A. Yes, sir.

16 Q. Was that before you went down and looked at
17 any photographs?

18 A. Before.

19 Q. Let me show you a page of your statement. Do
20 you recognize this being a page taken from your statement?

21 A. Yes, sir.

22 Q. And is this the portion where you are
23 describing how the robbery started?

24 A. Just afterwards, yes, sir.

25 Q. And is this where -- let me ask you. You said

1 in the statement, "I turned and looked and everyone had
2 guns."

3 A. Yes, sir.

4 Q. And when you say everyone had guns, you are
5 talking about all the -- let me back up a minute. Did Mr.
6 Rivas, did you talk in the statement about him saying there
7 are other people in the store with him?

8 A. Yes, sir.

9 Q. At that time at midnight with Detective
10 Johnson, did he say, did you tell Detective Johnson,
11 "There's eight of us in the store. The customers are with
12 me. If I shoot you, I have to shoot everyone. It's not
13 personal. I turned and looked and everyone had guns. Some
14 had automatics, some had revolvers. I saw at least six,
15 maybe eight, all males, all white, but two Hispanics. And
16 they were telling everyone to be quiet and to put their
17 hands on the counter."

18 At that time you said six, maybe eight. But
19 you made the statement, "everyone had guns." Any doubt in
20 your mind about that, that everyone in there had their guns
21 trained on the employees?

22 A. No, sir, no doubt.

23 Q. Okay. You weren't sitting there and timing
24 how long you were looking at them; is that right?

25 A. No, sir.

1 Q. You weren't counting them by hand, were you?

2 A. No, sir.

3 Q. You estimated that night there were six, maybe
4 eight?

5 A. Yes, sir.

6 Q. But no doubt in your mind what you told
7 Detective Johnson that night is they all had guns?

8 A. Yes, sir.

9 Q. You have never wavered from that, have you?

10 A. No, sir.

11 Q. As far as these photos, that night when you
12 made your positive IDs, what you told the officers those
13 were the ones you were positive of in your heart that night;
14 is that right?

15 A. Yes, sir.

16 Q. And then you also identified two others or two
17 others you thought participated in the robbery; is that
18 right?

19 A. Yes, sir.

20 Q. That was Mr. Halprin and Mr. Harper?

21 A. Yes, sir.

22 Q. Did you ever pick out anyone else that was not
23 involved in the robbery at all?

24 A. No, sir, I did not.

25 Q. All your identifications turned out to be

1 people involved in that robbery; is that right?

2 A. Yes, sir.

3 Q. The photograph here of Mr. Halprin, did that
4 appear a little bit different than what he looked like that
5 night?

6 A. A little bit, not much.

7 Q. Okay. The photograph you saw the next day on
8 the show did that appear to be a more accurate photograph of
9 him as he appeared that night?

10 A. Yes, sir.

11 Q. And then this photograph that we see in this
12 exhibit, is that a more accurate appearance of how his
13 facial expressions were back during the robbery?

14 A. Yes, sir.

15 Q. Did he have this little goatee at that time?

16 A. I don't believe he did at that time.

17 Q. Okay. But you didn't make your identification
18 here in the courtroom or what you saw on the photo lineup
19 based on anything you had seen on TV, did you?

20 A. No, sir.

21 Q. And as far as the other employee that was in
22 the back, she was brought up to the front sometime after the
23 robbery started; is that right?

24 A. Yes, sir.

25 Q. She was not brought up until after everyone

1 had been searched at the counter?

2 A. No, sir.

3 Q. So it didn't happen all at once during the
4 robbery someone is back there with her?

5 A. No, sir. They brought her up shortly after he
6 announced this was a robbery after -- when I was turning and
7 looking.

8 Q. Okay. Now, how long did this robbery take
9 place from start to finish?

10 A. I made the announcement, it was just after
11 6:00 and it was about 30, 35 minutes total time.

12 Q. Okay. Did you -- when you heard the rapid
13 gunfire at the end, did you happen to look at your watch at
14 that time?

15 A. I looked at my watch and I believe it said
16 6:35.

17 Q. Just a little after 6:30?

18 A. Yes, sir.

19 Q. So approximately half an hour?

20 A. Yes, sir.

21 Q. Now, I spoke to you not long after this event
22 occurred; is that right?

23 A. Yes, sir.

24 Q. Came out to the store?

25 A. Yes, sir.

1 Q. You went over these events with me?

2 A. Yes, sir.

3 Q. We've met on several times since then, have we
4 not?

5 A. Yes, sir.

6 Q. We've never asked you to change your testimony
7 or perjure yourself or anything like that, have we?

8 A. No, sir.

9 Q. Never asked you we really need to put it on
10 Randy Halprin at this trial, have I?

11 A. No, sir.

12 Q. As far as questions, when we were at George
13 Rivas' trial, most of my questions were directed as to what
14 George Rivas was doing; is that right?

15 A. That's correct, sir.

16 Q. Same on the others?

17 A. Yes, sir.

18 Q. Because in their trial, that's what we
19 emphasized?

20 A. Yes, sir.

21 Q. Okay.

22 MR. SHOOK: That's all we have.

23 RECROSS EXAMINATION

24 BY MR. ASHFORD:

25 Q. Well, in those others trials you were asked

1 who you identified; is that correct?

2 A. Yes, sir.

3 Q. And in those others trials when you were asked
4 who you identified, you mentioned people that you have
5 identified marked there numbered on State Exhibit No. 22 and
6 23; is that correct?

7 A. I identified -- I mentioned the people that I
8 positively identified, yes, sir.

9 Q. Okay. And what you are trying to tell the
10 jury now is that you didn't mention these tentative IDs,
11 because in that trial you just weren't asked that specific
12 question?

13 A. That's correct, yes, sir.

14 Q. Okay. If Mr. Halprin didn't have facial hair
15 the night of the robbery, what is so more representative of
16 him on that picture behind you than the picture that's on
17 the floor down here?

18 A. His face is a little fuller like it was the
19 night of the robbery.

20 Q. You believe his face is fuller on that picture
21 down there than it is on the floor?

22 A. I believe so, yes, sir.

23 Q. What do you think about it as he sits here
24 today?

25 A. I think it's a little thinner than what it

1 was.

2 Q. But you didn't have any problem recognizing
3 him today?

4 A. No, sir.

5 Q. Now, Mr. Shook just asked you in your
6 statement and just read for you where you said he said, "I'm
7 serious. There's eight of us in the store," correct?

8 A. Yes, sir.

9 Q. Okay. I asked you on cross-examination, did
10 anybody make the statement that there's six or eight of us
11 in the store? Did Mr. Rivas ever say that? And you said
12 no. Do you recall that?

13 A. No, sir, I don't, I don't.

14 Q. I asked you, if you were coming up with the
15 six or eight figure because it had been suggested to you
16 that they had six or eight people in the store. Do you
17 recall me asking you that?

18 A. I recall you asking me that, yes, sir.

19 Q. Okay. So did somebody make that statement or
20 not?

21 A. I made the statement to the detective when I
22 gave him my statement. When I gave my statement.

23 Q. All right. Did Mr. Rivas make that statement
24 that there's six or eight of us or something to that effect?

25 A. Something to that effect, yes, sir.

1 Q. Okay. So I'm going to ask you again. Do you
2 think that affected the number that you ended up stating
3 here in your testimony here today?

4 A. No, sir.

5 Q. Okay. When you say you turned around and
6 everyone had guns, what you are saying is everyone that you
7 saw when you turned around had a gun, correct?

8 A. Yes, sir.

9 Q. But you will agree with me that the numbers in
10 terms of numbers of people that were known to have
11 participated in the robbery and the numbers that you state
12 don't match up, correct?

13 A. Correct.

14 Q. Okay. Everyone could have -- could not have
15 potentially been in the front if somebody was in the back
16 with Laura Fernandez, talking on that radio, correct?

17 A. Correct.

18 Q. It wasn't fifteen minutes later when they
19 walked up with Laura. It was right after somebody said --
20 after Mr. Rivas said this is a robbery, correct?

21 A. Yes, sir.

22 Q. Okay. I mean, how long are we talking about?
23 Thirty seconds?

24 A. About that, maybe, if that long.

25 Q. And she was -- already had her fingers

1 ziptied?

2 A. Yes, sir.

3 Q. So, obviously, everybody involved was not at
4 the front at the time that Mr. Rivas said, "This is a
5 robbery"?

6 A. Yes, sir.

7 Q. All right.

8 MR. ASHFORD: That's all I have, Judge.

9 MR. SHOOK: Nothing further, Judge.

10 THE COURT: Thank you, sir. You may
11 stand down.

12 MR. SHOOK: May this witness be excused?

13 MR. ASHFORD: Subject to recall, Judge.

14 THE COURT: Subject to recall.

15 MR. SHOOK: We'll call Officer Cassout.

16 THE COURT: Let the record reflect this
17 witness has been sworn.

18 TIM CASSOUT,
19 having been duly sworn, was examined and testified as
20 follows:

21 DIRECT EXAMINATION

22 BY MR. SHOOK:

23 Q. Would you tell us your name, please.

24 A. Timothy Cassout.

25 Q. How are you employed?

1 A. As a police officer for the City of Irving.

2 Q. How long have you worked with the City of
3 Irving?

4 A. This June will be five years.

5 Q. Now, at the present time are you on active
6 duty with the United States Army?

7 A. Yes, sir, I am.

8 Q. Where are you stationed?

9 A. Fort Hood, Texas.

10 Q. Let me turn your attention back to December
11 24th of 2000. Did you come on duty that day?

12 A. Yes, sir, I did.

13 Q. About what time?

14 A. 3:45.

15 Q. And what division did you work?

16 A. Patrol Division in 42 beat.

17 Q. Okay. How long had you been with the Irving
18 Police Department at that time?

19 A. About two years, I believe.

20 Q. As a patrol officer what were your duties?

21 A. Respond to calls and enforce state laws and
22 local regulations and things like that.

23 Q. You were wearing a uniform and in a marked
24 police car?

25 A. Yes, sir, I was.

1 Q. And did you know another officer by the name
2 of Aubrey Hawkins?

3 A. Yes, I did.

4 Q. Looking at the photograph, I believe it's
5 marked State Exhibit 6, is that a photograph of Aubrey
6 Hawkins?

7 A. Yes, it is.

8 Q. And did he come on patrol that same shift as
9 you did?

10 A. Yes, he did.

11 Q. You said that you worked the 42 beat; is that
12 right?

13 A. Yes, sir.

14 Q. Is the City of Irving divided up into
15 different beats by the police department?

16 A. Yes, sir, it is.

17 Q. And when you were assigned 42 beat, what
18 exactly does that entail, as far as your patrol duties?

19 A. 42 beat is located north of Highway 183
20 between Beltline and the west city limits.

21 Q. Okay. Now, do you have to stay in that
22 particular area or can you roam or go answer calls in other
23 areas?

24 A. Yes, sir, you can roam.

25 Q. And let me turn your attention to about 6:30

1 that evening. Where were you patrolling at that time?

2 A. I was in the Irving Mall parking lot at that
3 time.

4 Q. Is the Irving Mall parking lot located right
5 by Highway 183?

6 A. Yes, sir, it is.

7 Q. And is it across the highway from the shopping
8 center where the Oshman's Superstore is located?

9 A. Yes, sir, it is.

10 Q. I want to show you some photographs, which
11 have been marked as State Exhibit 51 through 58. Some of
12 these are aerial views of that area. Also, is there some
13 photos of the back parking lot of the Oshman's as it
14 appeared that night?

15 A. Yes, sir.

16 Q. And do these photographs accurately reflect
17 the layout of where the Oshman's was and how it was
18 situated?

19 A. Yes, sir, it is.

20 MR. SHOOK: At this time we offer State
21 Exhibits 51 through 58.

22 THE COURT: Hearing no objection, Nos. 51
23 through 58 shall be admitted.

24 MR. KING: We have no objection, Your
25 Honor.

1 Q. (By Mr. Shook) Let me first show you State
2 Exhibit 51, shows an aerial view. Is this the Oshman's
3 store located here?

4 A. Yes, sir.

5 Q. Is this Highway 183?

6 A. Yes, it is.

7 Q. And these buildings over here, what are they?

8 A. That would be the Irving Mall.

9 Q. If we could get a close in of this Irving Mall
10 area. Where were you parked at that time?

11 A. In the parking lot just to the left side of
12 the screen, sir.

13 Q. To the left?

14 A. Left, yes, sir.

15 Q. Over here?

16 A. No, the left, west side.

17 Q. Somewhere in here?

18 A. Around that area, sir.

19 Q. All right. And was the mall open or closed at
20 that time?

21 A. It was closed.

22 Q. Any other cars in the parking lot?

23 A. Not that I recall.

24 Q. Okay. Were you answering a call at that time
25 or just sitting your patrol car?

1 A. I was sitting in my patrol car.

2 Q. Window up or down?

3 A. Down.

4 Q. And what were you doing at that time?

5 A. I was talking on the telephone.

6 Q. Did you hear anything unusual around 6:30 or
7 so that evening which drew your attention?

8 A. Yes, I did.

9 Q. What was that?

10 A. I thought I heard a bunch of firecrackers
11 being lit off.

12 Q. Okay. When you say a bunch of firecrackers,
13 what do you mean exactly?

14 A. Like a package of the fireworks, Black Cats or
15 something like that being lit.

16 Q. And lit a string of firecrackers?

17 A. Yes, sir.

18 Q. Did it sound like they were going off one
19 right after the other?

20 A. Yes, sir, they did.

21 Q. Were they in rapid succession?

22 A. Yes, sir.

23 Q. And that was a little unusual for Christmas
24 Eve?

25 A. Yes, sir.

1 Q. After you heard that, did you do anything else
2 in response to that?

3 A. Not -- no, sir.

4 Q. Okay. Now, shortly after that -- well, let me
5 ask you this. You are in your patrol car. You have your
6 radio on at all times; is that right?

7 A. Yes, sir.

8 Q. Are you monitoring calls, as far as the
9 dispatcher dispatching you to specific areas, as well as
10 other units?

11 A. Yes, sir.

12 Q. You were working 42 beat that evening, right?

13 A. Yes, sir, that's correct.

14 Q. If the dispatcher wanted to get a hold of you,
15 how would she do that? How would she address you?

16 A. She would address me as 242.

17 Q. What did the 2 stand for?

18 A. Two stands for the second shift or evening
19 shift.

20 Q. And 42 is?

21 A. The beat.

22 Q. What beat was Officer Hawkins working that
23 evening.

24 A. He was working 34 beat.

25 Q. And so if she wanted to dispatch or speak with

1 Officer Hawkins, how would she do that?

2 A. She would call him 234.

3 Q. And shortly after you -- or shortly before you
4 heard those fireworks, had Officer Hawkins and another
5 officer been dispatched to that area?

6 A. Yes, sir.

7 Q. What type of call was that?

8 A. It was a suspicious persons call.

9 Q. Okay. And shortly after you heard the
10 fireworks or so, were you -- somewhere around that time,
11 were you also dispatched to that area?

12 A. Yes, sir, I was.

13 Q. And who dispatched you?

14 A. Dispatch.

15 Q. Okay. And what did they ask you to do or
16 request you to do at that time?

17 A. Told me to be en route to Oshman's to back up
18 34 and another unit, which I can't remember who it was.

19 Q. And did you do that at that time?

20 A. Yes, sir, I did.

21 Q. Did it take you a long time to get to the
22 Oshman's?

23 A. No, sir, it didn't.

24 Q. You were just kind of across the highway; is
25 that right?

1 A. Yes, sir.

2 Q. What route did you take?

3 A. I took the service road west to Esthers,
4 crossed the highway on Esthers, and came back down the south
5 service road to Willow Creek.

6 Q. We see a street that goes behind the Oshman's;
7 is that right?

8 A. Yes, sir.

9 Q. And is that the route that you took when you
10 were coming to the Oshman's?

11 A. Yes, sir, it is.

12 Q. Why did you decide to go toward the back of
13 the Oshman's?

14 A. When I was dispatched to the call they said
15 three to four males had gone around to the back of the
16 store.

17 Q. Then you came down this street to check out
18 the situation; is that right?

19 A. Yes, sir.

20 Q. And was it your understanding that Officer
21 Hawkins had already arrived back there?

22 A. Yes, sir.

23 Q. When you first arrived on the scene, did you
24 -- were you a little suspicious as to what was going on or
25 somewhat cautious?

1 A. Yes, sir, I was.

2 Q. Why was that?

3 A. They kept trying to check his status or
4 Officer Hawkins' status on the radio and he wasn't answering
5 his radio.

6 Q. What do you mean by "checking his status"?

7 A. When you get to a certain situation or certain
8 time limit, the dispatcher will call and ask you how you are
9 doing and if everything is all right. And you are supposed
10 to respond Code 4 if everything was okay and he wasn't
11 answering at all.

12 Q. When you step outside your patrol car, do you
13 also have a radio with you?

14 A. Yes, sir, we do.

15 Q. So you can keep in constant communication with
16 dispatch?

17 A. Yes, sir.

18 Q. While on the way to the scene, then, you
19 noticed that he was not answering?

20 A. Yes, sir, I did.

21 Q. Let me show you State Exhibit 53. That's kind
22 of a side view of the back of the Oshman's; is that right?

23 A. Yes, sir, it is.

24 Q. Were you coming from this direction?

25 A. Yes, I was.

1 Q. What is this area here which would have been
2 to your right here in the lower part of the screen?

3 A. It's a used car lot.

4 Q. Is this the angle that you arrived there at
5 the back of the Oshman's?

6 A. Yes, sir, it is.

7 Q. What's the first thing that you noticed
8 unusual as you came down Willow Creek?

9 A. The first thing I noticed was all the debris
10 laying in the roadway.

11 Q. What was that laying?

12 A. I'm sorry?

13 Q. What area of the roadway was that laying?

14 A. About where the fire engine is parked.

15 Q. Somewhere in this area?

16 A. Yes, sir.

17 Q. Once you saw the debris in the roadway, what
18 did you do?

19 A. I started slowing down and I turned on my
20 spotlight and started looking in the used car lot area in
21 the open field to see if somebody had checked into a chase
22 that way or ran that way.

23 Q. Did you see anything at that time?

24 A. No, sir, I did not.

25 Q. What was the next thing that you saw?

1 A. I noticed a patrol car backed up into the
2 trailer.

3 Q. Okay. And that's what we see right here, the
4 way the patrol car is backed into the trailer?

5 A. Yes, sir, it is.

6 Q. Was that a pretty unusual situation to see a
7 patrol car parked like that?

8 A. Yes, sir, it was.

9 Q. Where did you park your car?

10 A. I started to pull into the parking lot right
11 where that fire truck is at.

12 Q. This area here?

13 A. Yes, sir.

14 Q. And then what did you do?

15 A. I started pulling in and I stopped when I saw
16 something.

17 Q. When you get out, is there anyone else around
18 at that time?

19 A. No, sir.

20 Q. And when you saw something, what is it that
21 you saw?

22 A. I saw a body laying on the ground.

23 Q. Okay. And what area of the loading dock area
24 was the body?

25 A. From my car or --

1 Q. From this photograph.

2 A. It's kind of hard to tell from that
3 photograph, sir.

4 Q. Okay. Let me show you State Exhibit 58. Does
5 this show a closer view of the loading dock area?

6 A. Yes, sir, it does.

7 Q. Does that show the area where you saw the body
8 lying?

9 A. Yes, it is.

10 Q. And would that be generally in this area here?

11 A. Yes, sir, it is.

12 Q. Could you tell who it was when you first saw
13 the body?

14 A. No, I couldn't.

15 Q. And was the body face down or face up?

16 A. It was face down.

17 Q. Once you saw the body, what did you do?

18 A. I called dispatch and told them I had a person
19 down in the back of the Oshman's.

20 Q. And were you doing that over your radio that
21 you carried with you?

22 A. Yes, sir.

23 Q. Did you begin to walk towards the body?

24 A. Yes, sir, I did.

25 Q. Once you walked towards the body, did you get

1 a better view of it?

2 A. Yes, I did.

3 Q. What did you notice about it at that time?

4 A. The patch on his shoulder.

5 Q. And what did the patch tell you?

6 A. It was an Irving police officer that was down.

7 Q. What did you do at that time?

8 A. I made a quick check or I actually got on the
9 radio first and told them that we had an officer down and
10 made a quick check of his pulse and then I took cover.

11 Q. When you checked his pulse, what area of his
12 body did you check?

13 A. I believe it was his wrist.

14 Q. Okay. Were you able to get a pulse at all?

15 A. No, sir.

16 Q. You said that you took cover. Why did you
17 take cover at that time?

18 A. Because I was by myself and there was an open
19 door back there and there was a lot of places I couldn't
20 see. It was not safe.

21 Q. So you were the first to arrive on the scene?

22 A. Yes, sir, I was.

23 Q. And you had no idea, whoever had done this to
24 the officer, you had no idea where they were at that time?

25 A. Exactly.

1 Q. Did other officers arrive quickly on the
2 scene?

3 A. Yes, sir.

4 Q. Once they arrived, what did you do with them?

5 A. We set up a quick perimeter in the back and I
6 went and checked his pulse again to make sure I didn't miss
7 anything.

8 Q. Any pulse at that time?

9 A. No, sir.

10 Q. What did you do with him at that point in
11 time?

12 A. We just maintained a perimeter until we had
13 more units back there to cover everything.

14 Q. Was Sergeant Norton one of the officers that
15 arrived soon after?

16 A. Yes, sir.

17 Q. Did you and Sergeant Norton, were you able to
18 turn the officer over?

19 A. Yes, sir, we were.

20 Q. Did you see who the officer was at that time?

21 A. Yes, I did.

22 Q. Who was that?

23 A. It was Aubrey Hawkins.

24 Q. Could you tell what type of trauma had
25 occurred to him?

1 A. He seemed to have some sort of head trauma. I
2 didn't see any actual entry or exit wounds, but his head
3 seemed to be swollen?

4 Q. Was there a lot of blood?

5 A. Yes, sir. There was quite a bit of blood.

6 Q. After he was turned on his back, did you
7 attempt to resuscitate him in any way?

8 A. Yes, sir, we performed CPR.

9 Q. What role did you take in that?

10 A. I was doing the breathing.

11 Q. Who was doing the compressions?

12 A. Sergeant Norton was.

13 Q. At any point in time could you tell if he was
14 responding at all?

15 A. No, sir.

16 Q. Did paramedics arrive soon afterwards?

17 A. Yes, sir, they did.

18 Q. Did they take over the lifesaving attempts at
19 that time?

20 A. Yes, sir, they did.

21 Q. And take Officer Hawkins away?

22 A. Yes, sir, they did.

23 Q. Now, while you were waiting for backup
24 officers, you were checking the scene right around Officer
25 Hawkins' body?

1 A. Yes, sir, I did.

2 Q. Okay. Did you see any weapons on the ground?

3 A. Yes, I did.

4 Q. What type of weapon was that?

5 A. It was a revolver.

6 Q. Where was that located?

7 A. Not far from where his body is near the trash
8 compactor, I believe.

9 Q. Let me show you State Exhibit No. 39. Does
10 that appear how it was laying in the parking lot?

11 A. Yes, sir.

12 Q. Did you ever move or touch that weapon?

13 A. No, I did not.

14 Q. Did you also look at -- at Officer Hawkins'
15 holster where he carried his handgun?

16 A. Yes, I did.

17 Q. Did he have his handgun with him?

18 A. No, he didn't.

19 Q. Did you make note of that and put that on
20 here?

21 A. Yes, I did.

22 Q. After Officer Hawkins was taken away, what
23 were you assigned to do then?

24 A. I was assigned perimeter duties.

25 Q. Around the Oshman's itself?

1 A. Yes, sir.

2 Q. How long did you stay there that night?

3 A. Quite a while. I don't know exactly how long,
4 but it was well after the end of my shift.

5 Q. You were never asked to interview witnesses or
6 anything like that?

7 A. No, sir.

8 Q. You never touched that gun or any other
9 evidence in the back?

10 A. No, sir.

11 Q. Were you careful not to disturb any evidence?

12 A. Yes, sir, I was very careful.

13 Q. And for the record did this crime scene
14 location, was it in Dallas County, State of Texas?

15 A. Yes, sir, it was.

16 MR. SHOOK: That's all we have, Judge.

17 CROSS-EXAMINATION

18 BY MR. ASHFORD:

19 Q. Officer, did you get the same call as Officer
20 Hawkins or did you get called to back him up or --

21 A. I believe my call was updated a little more
22 than what he originally received because they were still
23 gathering information at the time.

24 Q. So you heard what appeared to be fireworks
25 before you got anything on the radio or --

1 A. Before I was dispatched, sir.

2 Q. Before you were dispatched?

3 A. Yes, sir.

4 Q. Did you hear Officer Hawkins' dispatch?

5 A. Yes, I did.

6 Q. Okay. And how soon before the fireworks did
7 you hear that dispatch?

8 A. I really couldn't give you a time frame, sir.
9 I wasn't paying attention to it. I just thought it was odd
10 that I would hear fireworks on Christmas Eve.

11 Q. Okay. Well, after you heard the fireworks,
12 were you dispatched there kind of immediately thereafter?

13 A. Yes, sir.

14 Q. How long did it take you to get there?

15 A. Between three to five minutes, I guess.

16 Q. Okay. Now, you said you were to back up 34
17 and another unit; is that correct?

18 A. Yes, sir.

19 Q. Okay. So you were being called out to back up
20 a suspicious person's call at the Oshman's, not shots being
21 fired at Oshman's or not an officer down at Oshman's,
22 correct?

23 A. That's correct, sir.

24 Q. So you and Officer Hawkins, 34, and another
25 squad car would have been going all to the same call; is

1 that correct?

2 A. Yes, sir.

3 Q. Now, is that pretty common that they would
4 call three officers just to a suspicious persons call?

5 A. Yes, it is. When you have more than one
6 person there were three to four persons, according to
7 dispatch, so that would be normal.

8 Q. And your dispatch was specifically three to
9 four males?

10 A. Yes, sir, I believe so.

11 Q. Do you know if it was three or four males in
12 the front of the Oshman's, three or four males behind the
13 Oshman's?

14 A. When I was dispatched, sir, they said that the
15 person -- the people involved had gone around to the rear of
16 the Oshman's.

17 Q. So you were -- well, as far as you could
18 expect from the dispatch, you were expecting to find
19 potentially three or four males in the back of the Oshman's?

20 A. Yes, sir.

21 Q. You had no idea that a robbery had occurred?

22 A. No, sir.

23 Q. Okay. That wasn't the nature of the call?

24 A. No, sir.

25 Q. Had no idea that there were potentially six to

1 seven people actually involved, correct?

2 A. No idea at all, sir.

3 Q. But you did have the specific number of people
4 that went around the back and that was three or four?

5 A. Yes, sir.

6 Q. Do you know where that three to four
7 information came from?

8 A. No, sir, I don't.

9 Q. Okay. Now, you said it's not unusual for
10 three or four units to be called out when there's three or
11 four people reported being involved. Is there a policy as
12 to how you respond and how you proceed on a suspicious
13 persons call? What I'm getting at is, are you supposed to
14 wait for the backup to get there? Are you supposed to go
15 ahead and approach? Or what is the scenario?

16 A. There's not a set policy, sir.

17 Q. Okay. When you approached, though, you
18 approached with caution and you kind of stopped away from
19 the Oshman's before you got there, correct?

20 A. Yes, sir.

21 Q. Was that just because you saw the debris or
22 were you waiting for backup or what was the reason for that?

23 A. Well, when I'm en route --while I was en route
24 to the Oshman's, dispatch was continuously updating the call
25 and I recall hearing something to the effect that they can't

1 get a hold of anybody inside the Oshman's. And the fact
2 that Aubrey wasn't answering his radio at all made me more
3 suspicious and cautious.

4 Q. And how long was it after you pulled up until
5 that third unit got there?

6 A. He got there pretty quick, sir. It probably
7 wasn't more than a minute, if that.

8 Q. Okay. So is it safe to say within two or
9 three minutes of the call all three of y'all could have been
10 there?

11 A. I can't answer that question, sir.

12 Q. Okay. The gun depicted on State Exhibit No.
13 39, you say you saw that out there lying on the ground?

14 A. Yes, sir.

15 Q. Pretty much out there in plain view?

16 A. Yes, sir, it was.

17 Q. Could you tell whether it had been discharged
18 or not?

19 A. I didn't examine it that close, sir.

20 Q. You have, basically, physical evidence persons
21 that are responsible for doing that type of activity; is
22 that correct?

23 A. Yes, sir, we do.

24 MR. ASHFORD: I'll pass the witness, Your
25 Honor.

1 MR. SHOOK: Nothing further, Judge.

2 THE COURT: Thank you, Officer Cassout.

3 You may stand down.

4 MR. SHOOK: May this witness be excused?

5 MR. ASHFORD: No objections, Your Honor.

6 THE COURT: He may be excused. We'll

7 take our lunch break and stand in recess until 1:15.

8 [End of Volume]

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1 STATE OF TEXAS *

2 COUNTY OF DALLAS *

3 I, NANCY BREWER, Official Court Reporter for the 283rd
4 Judicial District Court, do hereby certify that the above
5 and foregoing constitutes a true and correct transcription
6 of all portions of evidence and other proceedings requested
7 in writing by counsel for the parties to be included in this
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9 numbered cause, all of which occurred in open court or in
10 chambers and were reported by me.

11 WITNESS MY OFFICIAL HAND on this the 29 day of
12 9, 2003.

13
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